Judicial System in India during Mughal Period with Special Reference to Persian Sources

(Nezam-e-dadgahi-e-Hend der ahd-e-Gorkanian bewizha-e manabe-e farsi)

For the Award of the Degree of

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Declaration

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I declare that the work done in this thesis entitled **"Judicial System in India during Mughal Period with special reference to Persian sources"**, for the award of degree of **Doctor of Philosophy**, submitted by me is an original research work and has not been previously submitted for any other university\Institution.

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Attributed

To

My Parents

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Introduction

In the era of communal violence and international terrorism where Muslims are depicted as terrorist because he or she belongs to the Muslim community which is of course a very insult to the particular community. Certain elements are trying to malign the particular sect in the name of religion due to jealously and do not understand them equal citizen of the particular country. This kind of behaviour indicates narrow mindedness ,communal politics or anything in negative sense ,either committed by Muslims,Hindus,Chritians or any other religions.

There is no religion of terrorist and communal people. They are the enemy of the humanity and vibrant cultures of the particular country .They are the enemy of all the religion. No religions teaching is based on the communal ethos and terrorist values .Terrorist are in every religion whether they are muslins or Hindu, or Christians of any religions.

History is a very important tool for spreading the communal violence and terror in the heart of people. They use histories for mobilizing the people in their favour and create tensions among the religious minorities .The consciousness of the construction is based on the histories and historical events which were discovered by the historians .Therefore history plays a very important role in shaping the particular country.

Historians have greater role to shape the democratic histories. Historians are talker of the pasts. They paint the past with their own eyes .We sees the past through the eyes of the historians. Because It is historians who created history and discovered the historical truth which was based on the historian subjectivity of the mind.Histrory is always a history of subjective which is problem and therefore it is very important to write the objective history which is of course a very hard to write. State uses historians to write history in its favour as we have numerous examples. Therefore historian's role is very important to understand the past.

State is a guardian that has responsible to look after the subjects .It is state that constructs the structure of the society and builds up the democratic ethos. But some times state failed to deliver the communal harmony and loves for the subjects. The states of the world have numerous example of this kind of problems.

Among all the histories .Judicial history has become very important to understand the nature of state, nature of the ruler and very important to understand the structure of the society. Justice is in all societies is main pillar of peace and communal harmony. It decides the real status of state and real nature of the emperor.

In the background of the above statement, in the context of Indian history, we need to understand justice system of India very carefully, because the Pre-Mughal and Mughal period was painted by historians very badly in terms of communal senses and state was

depicted as theocratic and Islamic[1] .To me state was never theocratic and never Islamic. Recently historians like Harbans Mukhia,Muzzafar Alam ,Irfan Habib,Riyazuddin Aquil

[1] : Misunderstood or misrepresented means that several scholars like Jadu Nath Sarkar has misunderstood the Muslim kings, Islam and judiciary system of Islam in general. They have painted them as very cruel, heartless and not good enough with common masses particularly with Hindus. Historian like P. Hardy from the School of Oriental and African Studies that "apartheid was the dominant ideal in Medieval India, in default of Cultural victory" has criticized Medieval government in that manner. I.H.Qureshi has criticized the Mughal government in the following words:

"It was a crime to lull the Muslims into believing that the maintenance of the Empire was not their primary responsibility. Even more disastrous was the encouragement of the feeling that tolerance implied the belief that all religions were merely different paths, all equally good for reaching the same God. This was an even more potent cause of the demoralization and degeneration of the Muslims, especially their acceptance of subtle non-Islamic ideas. Indeed this was the darkest period in the history of Indian Islam". (A history of the freedom movement: Being the story of Muslim struggle for the freedom of Hind-Pakistan, 1707-1947, Karachi, 1957, vol.1, p.34.)

R.C.Majumdar also saw Medieval history in a communal angle. He says:

"The newly acquired ideal of a 'secular state' is opposed to all known facts of Indian history. But it is sought to be buttressed by a new conception of Indian history and culture, which recognizes no distinct Hindu or Muslim culture in Modern India, and looks upon these, along with European or Western culture, as so many streams muting together only to mingle and lose their separate entities in the sea of Indian culture. The Muslims, however, repudiate any such idea, and Islamic culture is not only recognized as a distinct entity, but has been formally adopted as the basis of the new state of Pakistan. In India, however, a small but gradually increasing class of influential persons now fight shy of the term 'Hindu' as a designation of a cultural unit, and only think in terms of Indian culture. Whatever may be value of such an idea in shaping Indian's culture, it becomes positively dangerous when it encroaches upon the domain of Indian history and seeks to ignore the existence of Hindu culture as one of the most potent and patent facts of Indian History even today". (C.H.Philips, (ed.), Historians of India, Pakistan and Ceylon, London, 1961, pp.426-7).

Peter Hardy also misinterpreted history in the following words:

"...neither educated Muslims nor educated Hindus accepted cultural co-existence as a natural prelude to cultural assimilation. Thus long before British rule and long before modern political notions of Muslim nationhood, the consensus of the Muslim community in India had rejected the eclecticism of Akbar and Dara Shikoh for the purified Islamic teaching of Shaikh Ahmad of Sirhindi and Shah Waliullah. Cultural Aparthied was the dominant ideal in Medieval Muslim India, in default of cultural victory".

(Islam in India, Sources of India Tradition, Columbia University Press, See Introduction).

M.S.Golwalkar has said: "In Hindustan exists, and must exist the ancient Hindu nation, and nought else but the Hindu nation. All those not belonging to the national, i.e. Hindu race, religion, culture and language, naturally fall out of the pale of real national life" Golwalkar said about the non-Hindu that "have no place in national life, unless they abandon their differences, adopt the religion, culture and completely merge themselves in the national race. So long, however, as they maintain their racial religious and cultural differences, they cannot but be only foreigners".

Golwalkar again said against Muslims and others that: the foreign races in Hindustan must either adopt the Hindu culture and language, must learn to respect and hold in reverence the Hindu religion, must entertain no idea except the glorification of Hindu religion and culture, i.e. of the Hindu nation, and must lose their separate existence to merge in the Hindu race, or they may stay in the country wholly subordinated to the Hindu nation, claiming nothing, deserving no privileges, far less any preferential treatment – not even citizen's rights. There is – or, at least, should be – no other courses for them to adopt. We are an old nation, let us deal as old nations ought to and do deal with the foreign races who have chosen to live in our country".

Quoted from Sita Ram Yechury's article Has the BJP disowned this man? 16 June, 2008, Hindustan Times, p.12.

All above statements are not correct and they represent communal agenda and against the Islamic secular thoughts.

,Sunil Kumar,S.A.Z Jafri ,Anjali Chatterji ,Sunil Kumar and Minakshi Khanna have opposite views that Pre-Mughal and Mughal State was not a theocratic state nor based on Islamic state.

In the thesis, we can see that the Pre-Mughal and Mughal period was not a theocratic state nor based on Islamic state. It shall state many new things which will say a very positive thing about the common masses and paint the good picture of the emperor and about their justice system.

The first chapter "**Sources of Islamic Law and sources of Law in Pre Mughal and Mughal Period"** deals with the Law of Islamic world that are the Quran, **Sunna, ijma and** the Qiyus. These laws are applicable in the world of all Muslim countries. For

Getting legitimacy the Mughal emperor has used these sources for justice of administration.

The second chapter "**Judiciary System in Islam"** deals with the judiciary system in the Islamic world. it has given a new system to the world in general and to India in particular. It has also brought new institutions like Caliphate, The Sadarat, Qazi-ul-Quzat and so on. It has new concept for "crime" and "Punishment". It developed new institutions regarding crime and punishment. The holy Quran has good concept of Justice in every sphere of life particularly for common masses like women, poor and so on. It has very liberal rule and very democratic in nature but regrettably, it has been misunderstood and misrepresented by several historians like Jadu Nath Sarkar, Philosopher, various Mullas and many others, which needs to be understood well. this chapter deals with the concept of justice in Islam, origin of judiciary and main functionaries of Judicial administration in Islam.

The Third chapter "**Judicial system in Pre-Mughal Period"**is very important. During the Pre-Mughal period, that is the Delhi-Sultanate and the Sher-Shah Period, which was very important to understand the justice system in the period for various reasons-----. First, the rulers were Muslims and subjects were mostly Hindus or non-Muslim, second, the most of the rulers belonged to the Sunni Sect of Islam. So, what was the treatment of the rulers to the non-Muslims or to the other sect of Muslims? Third, what was the Pattern of Muslim laws in the Period or was it Possible to apply the Muslim

law in that period in the form of Islamic Laws or were there some limitations? What was the administration of justice in Pre-Mughal Period? Or,were the pre-Mughal rulers able to implement or retain the same officials who were in the Islamic world? Did the state follow strictly the Islamic law or did they have their own laws? Who were the heads of justice system in Pre-Mughal period? As we know that in the Islamic world, the Khalipha was the head of the state, was it correct in terms of Pre-Mughal period? There are the questions which this chapter will deal with?

The fourth chapter "Judicial system in Mughal India" deals with the kind of system that was present during Mughal India. They brought new changes in judiciary system and gave a great impact on judiciary system in India.2Wahed Husain points out that judicial system of Mughal India has a full influence in the present judiciary system in India with some changes. He quotes J.N Sarkar by referring that "Thus the Mughal System at one time spread over practically all the civilized and organized parts of India."3 He further evaluates and points out the general features of the Mughal Administration which are following;

First, a strong and well –organized Government contributing to peace and order,

Secondly, a highly centralized form of government with an extensive administrative machinery,

Thirdly, an age of Renaissance in Art and literature,

Fourthly, An empire of unity in which different racial elements were more or less reconciled and contributed their skill, ability and wisdom to make the government prosperous.4 However Wahed Husain's characterization of the Mughal period can be contested .5

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[2] Husain,Wahed, B.L ,Administration of Justice during the Muslim rule in India with a History of the origin of the Islamic Legal Institutions,published by idarahi-i-adabiyat-i-Delhi,first print 1934,second reprint1977,Delhi,pp-103-106.

[3] Ibid,p,106.

[4] Ibid,p,30.

[5] Wahed Husain's four points are not convincing the current historians .His first point is that Mughal government is committed for "the peace and unity" is questionable due to long fight within the family as well out side the territory .There was never unity in the caste structure and women position is very weak in the society .There was no unity at the social label .Even politically India was not united at the various places.

His second point is that "government was highly centralized and with an extensive administrative machinery" which is also questionable by recent historians like Mudhu kahnna,Muzaffar Alam.They argue that government was not highly centralized because of the several kinds of revolt by the nobles and

The fifth chapter "Administration **of Justice under Babur and Humayan"is an important chapter.Various myth will end after reading this chapter.** Babur was a ruler of our country. He was a founder of Mughal Empire in India. Although he did not get enough time for the administration as Muhammad Akbar has rightly pointed out his status as conqueror I quote him "When Babar entered India as a conqueror, he followed in every sphere of administration the practices established by the Pathan Kings whom he supplanted on the throne of Delhi. During his short reign of about five years, he did not have a chance to devise any new system of government. Most of his time was spent in fighting his foes. He governed the land by means of large camps each commanded by a general devoted to the monarch. The king as well as his generals dealt with the few cases that were brought before them in a summary fashion. No regular system was in vague; no administrative practice or convention was established."[6] But his statement is "he did not have a chance to devise any new system of government----. No regular system was in vague; no administrative practice or convention was established" can contested because Babur had great sense of justice.

The contemporary Persian sources talk about it.I quote one verse which is very important to show the interest of Babur in justice;
"If you have done ill, keep not an easy mind, for retribution is Nature's law."[7]

The sixth chapter"**Administration** Of Justice underAkbar"is also an important chapter which this chapter deals with.Akbar was a great ruler of our country and placed a very secular idea in front of the people. His every gesture is very unique .It shows in his every action and act. His thinking is also very great in terms of his administration. He brought many changes in the administration

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regional subedars.His third points is more or less valid .His fourth points is "Empire of unity in which different racial elements were more or less reconciled and contributed their skill ,ability and wisdom to make the government prosperous." Questionable due to many new notions.the nobles see their own benefit and prosperity. This is highlighted by many historians like Irfan Habib in "Agrarian system of Mughal India" where he discusses that the economic exploitative structure of the Mughal India which led several revols like Jat Revolt, Satnami revolt and others revolts.Muzaffar Alam also points out that Madd-masa grant led a great revolt in the North India Awadh and Punjab.

[6] Akbar,Muhammad,the administration of justice by the Mughals,published by Muhammad Ashraf Kashmir Bazar ,Lohore,Pakistan,1948,7.

[7] Zahiru'd-din Muhammad Babur Padshah Ghazi,Babur –Nama,translated by Annette Susannah Beveridge ,published by Low Price Publications,firat published by 1921,reprinted in LPP 1989,1997,2000,2006,New Delhi, vol 1,p,44.

and done very good job for betterment of the people. He was the first ruler in our country who placed many secular ideas in front of the people which are very valuable for every body. He is a national monarch .Being an autocratic emperor; he follows democratic process in many ways. One can look upon his Din-i-Illahi ,Ibadatkhanan , religious policy towards everyone and policy toward Hindu.

In the same way his administration of justice is also very important to understand India and the Akbar, particularly his secular policies.Muhammad Akbar pointed out about the Akbar .He says that the many famous sovereigns of the East few were comparable with Akbar, and to him indisputably belonged the first place amongst the rulers of India. Not only was he equally great as a man, a warrior, and a stateman, but his reign fell at a time fitted to afford the freest play to the eminent qualities. The Mughal Emperors of India prided themselves on their love of equity, and regarded the administration of justice as an important duty which the sovereign could not afford to neglect. [8]

The seventh chapter "**Judiciary system of Jahangir" deals with his judiciary system which also will break some myth which historians ignored.** Jahangir was a great lover of justice and he took a keen interest in its administration. He did not want that any of his courtiers should hinder the oppressed in their approach to him and so installed a golden chain of justice.

Henry Beveridge who edited the The Tuzuk i-Jahangiri or memoirs of Jahangiri ,has given great description of administration of justice.

The eighth chapter "Administration of justice of Shah Jahan"deals with Shahjahan who was a very important emperor of Mughal India. Shah jahan was a great ruler.He is known more for architecture and art.But he dispensed justice to all in his empire and became very famous for this.His justice system was not based on Islamic principles.He also did not follow the Islamic law during

[8] Akbar,Muhammad,the administration of justice by the Mughals,published by Muhammad Ashraf Kashmir Bazar ,Lohore,Pakistan,1948,11.

providing the justice.His state was not an Islamic .His judiciary was based on the Emperor.

The ninth chapter "Administration of **AURANGZEBE"points out that**

Historians are very hostile with the policies of Aurangzebe.They branded him as bigotry, orthodox and fanatic ruler in India .Historians like J.N.Sarkar[9],Lane poole [10] and many European travelers and so on.Simutaneously ,his administration of justice was also criticized by the hostile historians .These allegations are not true .The sources that were used by the historians are mostly based on the Europeans sources. Historians should go beyond the European sources.

Chapter Ten **"Important of Persian sources" deals with the importance of the Persian sources because historians have ignored largely for the writing of judiciary system. They were heavily dependent on the Travelers account and other sources.**

[9] J.N.Sarkar ,history of Auranzebe.

[10] Stanley Lane-poole,Aurangebe and decay of the Mughal Empire,S.Chand &Co,Delhi.pp,75-87.

Chapter-1st

Sources of Islamic Law and sources of Law in Pre Mughal Period and Mughal Period

Muslim law or Islamic law was one of the major important legal systems of the medieval world. It had structured a new idea or new political, social and cultural ideas. In India, the Islamic laws also played very significant role in structuring the Indian administrative system, social, political and cultural. It also gave many new ideas about the judiciary system which has been ignored by the writers as some of the historians tried to postulate the Delhi-Sultanate as 'Dark age'[1] which is not true. Without seeing much into the legal system or judiciary system or the Sultan's and Mughal Emperor's justice to their subjects deeply, some historians tried to evaluate them as blood-thirsty monsters, forcible propagator of Islam, temple-destroyer and so on.[2] The recent study shows the opposite view in which Richard Eton,[3] Harbans Mukhia,[4] Muzaffar Alam,[5] Satish Chandra,[6] S.M.Jaffar,[7] S.P.Sangar,[8] U.N.Day,[9] A.D.Khan,[10] Wahed Husain,[11] M.Habib and K.A.Nizami,[12] Ibn Hasan,[13] R.P. Tripathi[14] and so on played significant role.

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[1] Chandra, Satish, Medieval India, from Sultanate to the Mughals, Part-1 (1206-1526), Har-Anand Publications Pvt. Ltd., New Delhi, 1997, Second Edition, 2000, p.277.

[2] Jaffar, S.M. Some Cultural Aspects of Muslim Rule in India, Idarah–I–Adabiyat – 1 Delhi, 1992, p.1.

3.Eaton, M. Richard, Essays on Islam and Indian History, Oxford University Press, New Delhi, 2000, pp.94–132.

[4] Mukhia, Harbans, The Mughals of India, Blackwell Publishing, First Published 2004, first Indian Reprint 2005, Delhi pp.14-71.

[5] Alam, Muzaffar, The Languages of Political Islam in India, c 1200 – 1800, Permanent black, Delhi, 2004, pp.1–80.

[6] Chandra, Statish, opcit.

[7] Jaffar, S. M. op.cit.

[8] Sangar, S. P. Crime and Punishment in Mughal Period, Reliance Publishing house, Delhi, 1998, pp.7–8.

[9] Day, U. N. The Government of the Sultanate, Munshiram Manoharlal Publishers Pvt. Ltd, Delhi, First Published, 1997 and Second edition, 1993, pp.107–118.

There are four sources of Muslim law, they are: The Holy Quran, the Sunna, Ijma and Qyias.[15]

The Quran

The Quran – the word of God – Purports to regulate the whole of a man's life; it is considered to be the actual word of God revealed to the Prophet through the Angel Gabriel. It is clear that during Muhammad's lifetime, it was used by him as the basis of legal settlement. The word 'Muslim' refers to submission to the religion of Islam and its concomitant obligations.[16] The Quran contains specific exhortations to pray, fast, give alms, and go on the Hajj, divorce, women, prayer and other similar moral obligation. These are the pillars (arkan) of the faith and they exist alongside a number of legal rules. Most of the legal rules concern family law (marriage, divorce and succession),17 for instances ,

"It is not righteous that ye turn your faces to the East and the West; but righteous is the one who believeth in Allah and the last day and the angels and the scripture and the prophets, and giveth his wealth, for love of Him, to Kinsfolk and to orphans and the needy and the wayfarer and to those who ask, and to set slaves free, and observeth proper worship and payeth the poor-due, keepeth the treaty when they maketh one, and helpeth the

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[10] Khan, A.D. A History of the Sadarat in Medieval India, vol. I, Cpre – Mughal Period, Idarah-i-Adabiyat -i- Delhi, 1998, pp vii – xi.

[11] Habib, Mohammad and Khaliq Ahmad Nizami (ed.), A Comprehensive History of India, Vol five, Part 1, The Delhi – Sultanate, People's Publishing Houses (P) Ltd, Delhi, first published, 1970, first reprint: May 1982, Second edition: October 7992, Reprint – 1996,2006. pp – 1 – 36

[12] Hasan, Ibn, The Central Structure of the Mughal Empire, Munshiram Manoharlal New Delhi, First Published 1936, Reprinted, 1970, pp – 3 – 72.

[13] Husain, Wahed, Administration of Justice during the Muslim Rule in India Idarah-i- Adabiyat -i- Delhi, First edition , 1934 reprint, 1970, pp – 1 – 9

[14] Tripathi, R.P. Some Aspects of Muslim administration, Central Book Depot, Allahabad, 1972, pp 1- 7.

[15] Dictionary of Islam, pp.400; 548.Shorter Encyclopedia of Islam, p,614Muslim Institutions, p.61; Islam by A.S. Triton, pp 62-63 Medieval Islam by Von Runebaum, pp148-53 U.N. Day, The Government of the Sultanate, Munshiram Manoharlal Publishers Pvt Ltd, Delhi, First Published 1972, Second Edition 1993,p,1070.

[16] Edge, Ian (ed.), Islamic Law and Legal Theory, Dartmouth Publishing Company limited, Aldershot, 1996, pp.xvi-xvii.

patient in tribulation and adversity and at the time of distress. Such person is sincere and God-fearing".[17]

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"O Ye who believe! Retaliation is prescribed for you in the matter of the murdered; the freeman for the freeman, and the slave for the slave, and the female for the female. And for him who is forgiven somewhat by his (injured) brother, prosecution according to usage and payment unto him in kindness. This is an alleviation and mercy from your lord. He who transgresseth after this, will have a painful doom".[18]

"And there is a life for you in retaliation, O men of understanding that ye may ward off (evil)".[19]

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"It is prescribed for you, when one of you approacheth death, if he leaves wealth that he bequeaths unto parents and near relatives in kindness. That is a duty for all those who ward off (evil)".[20]

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"And who so changeth (the will) after he hath heard it – the sin thereof is only upon him who changeth it. Lo! Allah is Hearer, Knower".[21]

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[17] Pickthall, Mohammed Marmaduke, The meaning of the Glorious Quran, Madhur Sandesh Sangam, New Delhi, First Print, 1994, Second Print, 1995, p,48

[18] Ibid, same page.

[19] Ibid, same page.

[20] Ibid,

[21] Ibid,

"But he who feareth from a testator some unjust or sinful clause, and maketh peace between the parties, (It shall be) no sin for him. Lo! Allah is forgiving, Merciful".[22] However, the Quran is also termed as al-kitab and contains, collected revelations of Mohammad in a definitive written form as we have seen some quotations from the Quran.[23]

In the beginning day of Islam, memory was used as a channel for the transmission of the Quran. During the life-time of the prophet only a part of the revelation was recorded. It was the Caliph Abu Bakr who decided to have a written text prepared and entrusted to Zaid bin Sabit, the favourite secretary of the prophet, with the task. Caliph Usman appointed a commission to co-operate with Zaid. Their combined efforts resulted in putting together a definite Quran in four copies. The final recession of the Quran was produced by Usman twenty five years after the death of the prophet in 632 A.D.[24]

There are 114 chapters or Suras in the Quran and each Sura is divided into a varying number of verses or ayat. Out of these there are about 100 suras which can serve as a sort of preamble to a code of conduct and which simply seek to reform the existing customary law. The scholars of the Medina and 'Iraqi' schools aimed at the elaboration of the Shariah, a system of the law for the Muslims, based on the Quranic Principles.[25]

Some scholars pointed out about the Quran that the Quran is more a religious and historical text than a legal text. They say that legal material is small and even that it has by no means been comprehensively or consistently dealt with.[26] Joseph Schact has similar view that the Quran teaching is not a teaching of law but it is more ethical than legal. Mohammad does not lay down legal formula but indicates what is right conduct

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[22] Ibid,

[23] Engineer, Asghar Ali, Islam, misgivings and History, Vitasta Publishing Pvt. Ltd, New Delhi, 2008, p.16.

[24] Dictionary of Islam, p.400.

[25] Sangar, S.P, op.cit, pp.1-2.

[26] Edge, Ian, Islamic law and legal History, op.cit, p.xvii.

and what wrong.[27] But, to me, it is a modern question and it is a matter of debate,but during our study period it was very much a part of legal system. Quran was one of the important sources of Muslim law.

Actually Quran or Islam has been misunderstood (by the westerns or by the Indians as well) but Quran is not like that as they are putting in a negative manner. Quran has been very positive all the times even in medieval times. It is upto the ruler groups and individual's outlook about Quran's teaching how they interpret or how they use it their lives.

The early Quranic verses in Mecca greatly emphasized social and economic justice and powerfully attacked accumulation of wealth and all exploitative practices. Right from Meccan to Madinese period justice (adil and gist) remained central to Islamic teachings. Quran also exhorted people of Mecca to be sensitive to sufferings of weaker sections of society.[28]

Quran does not propagate the violence as we find Quranic verse 2: 190 that

"And fight in the way of Allah against those who fight against you but be not aggressive. Surely Allah loves not the aggressors".[29]

Maulana Muhammad Ali of Lahore also says that Quran does not uphold the violence and he comments –

"When persecution ceases, and men are not forced to accept or renounce a religion, being at liberty to profess any religion of the truth of which they are convinced, then there should be no more fighting. The words that follow make the sense quite clear. If they desist from persecution, the Muslims are at once to stop fighting against them, and hostilities are not to be continued against any except the aggressors". (Holy Quran, Lahore, 1973, p.82).[30]

The Maulana further points out that:

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[27] Schacht, Joseph, Origins of Islamic Jurisprudence, p,384.

[28] Engineer, Asghar Ali, Islam misgivings and History, Vitasta Publishing Pvt. Ltd, new Delhi, 2008, p.5.

[29] Quran Quoted by Engineer, op cit, p.17.

[30] Ibid, pp.17-18.

"A comparison with (22:40) will show that this is the correct explanation. There the object of the Muslims, fights is plainly set forth in the following words. And if Allah did not repel some people by others, cloisters and churches and synagogues and mosques in which Allah's name is much remembered would have been pulled down. This shows clearly that the Muslims fought not only in defence of mosques, but also in that of churches and synagogues, and even of the cloisters of monks. The same object is stated here in the words of Allah, so that there is no persecution on the score of religion, and everyone is at liberty to hold any belief which he likes. The verse, in fact, lays down the broad principles of religious freedom". (Ibid)[31]

The above Quranic verse shows that Quran does not support violence unnecessarily.

The Quran lays down very rigorous standards of Justice. Justice is the central value in Islam. No system can be stable without justice. Adil is another name for Allah and thus most fundamental to good governance.

The Quran says,

"O you who believe, be upright for Allah, bearers of witness with justice; and let the hatred of a people incite you not to act justly. Be just; that is nearer to observance of duty. And keep your duty to Allah. Surely Allah is aware of what you do (5:8)".[32]

The Prophet was a highly just ruler. He followed Allah who is described by Quran as "Best of the Judges". The opposite of justice in Quran is Zulm. The root meaning of Zulm is darkness. Injustice always leads to darkness of oppression and exploitation in society.

The Quran says:

"Allah is friend of believers and brings them out of darkness into light" (2: 257)"[33]

Another important value of Islam is equality of all human beings. It is called Musawat. The Quran says that

"All children of Adam have equal honour". (17: 70)[34]

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[31] Ibid, p.18.

[32] Ibid, p.116.

[33] Ibid, p.117.

Allah is a creator of all the human beings therefore everyone has right to life and dignity, and no one deprives human beings of this dignity. Thus, a ruler has to ensure equal dignity and honour to all in his regime. There should not be any distinction of colour, caste, creed, language, sex, religion, place of birth, nationality between man and woman

The Quran says:

"O humankind, surely we have created you from a male and a female and made you tribes and families so that you may know each other. Surely the noblest of you with Allah is the most dutiful of you". (49: 13)[35]

Hazrat Ali, the fourth Caliph in succession to the Prophet , Wrote a letter to Malik Ashtar whom he had appointed as governor of Egypt. This letter is of great significance on the subject of governance. The letter says:

"Remember, Malik, that among your subjects there are two kinds of people: those who have the same religion as yourself and they are brothers unto you and those who have other religions than yours and yet are human beings like you, men of either category suffer from the same weakness and disabilities ,either intentionally or foolishly and unintentionally without realizing the enormity of their deeds . Let your mercy and compassion come to their rescue and help in the same way and to the same extent that you expect God to show mercy and forgiveness to you". [36]

The letter says about nepotism and negligence of duty to God and people. The letter follows :

"So far as your own affairs or those of your relatives and friends are concerned, take care that you do not violate the duties laid down upon you by God and usurp the rights of mankind, be impartial and do justice, because if you give up equity and justice then you will certainly be a tyrant and oppressor. And whoever tyrannizes and oppresses creatures of God will earn enmity of God along with the hatred of those whom he has oppressed" [37]

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[34] Ibid, p.117.

[35] Ibid, p.118.

[36] Ibid, p.119.

[37] Ibid, p.120.

About Governance and justice, the first Caliph Abu Bakar said while assuming office,

"O people! Behold me – charged with the cares of Government. I am not the best among you; I need all your advice and all your help. If I do well, support me; if I commit mistake, counsel me. To tell the truth to a person commissioned to rule is faithful allegiance; to conceal it, is treason. In my sight, the powerful and the weak are alike; and to both I wish to render justice. As I obey God and His prophet, obey me, if I neglect the laws of God and the prophet, I have no more right to your obedience." [38]

However, Abu Bakr, summarized the Islamic Philosophy of Governance. The main elements include;

1. People should advise the ruler and help him discharge his/her duties.
2. If the ruler governs well, support him/her, and if he goes wrong, counsel him/her
3. To tell the truth to the ruler is fulfilling one's duty and to keep silent when he/she goes wrong is treason
4. The powerful and weak should be equal in the sight of the ruler and he should deliver justice to both.
5. If the ruler follows God and the prophet, one should follow him/her and if he/she goes against them, he/she will have no more right to people's obedience[39]

In order to understand punishment for Apostasy, Quran is, in fact, against the punishment for Apostasy. Even Quran does not support those who want forceful conversion or use any coercive methods. Quran says:

"There is no compulsion in religion" [40]

"For you is your religion and for me is mine" [41]

"The dwellers of the desert say: we believe. Say : You believe not, but say, we submit; and faith has not yet entered into your hearts. These Bedouins had submitted (i.e.,

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[38] Ibid, p.121.

[39] Ibid, p.121.

[40] Ibid, p.140.

[41] Ibid, p.140.

accepted Islam) impressed by victories of Islam but had not become genuine believers as 'iman' (faith) had not really entered their hearts. One can become a true believer only when faith enters one's heart and that can happen only by exercising genuine freedom, not because of social pressure or Coercion or convenience".[42]

Quran clearly points out that choosing Islam or not, it is up to individuals.

Quran says :

"If Allah had pleased they would not have set up (other gods with Him). And we have not appointed thee a keeper over them (hafeez), and thou art not placed in charge of them ('Vakeel)." (6:108)[43]

Quran gives complete freedom to people to believe or not to believe and against punishment.

The Quran's pronouncement that:

"He who does an atom's weight of good will see it. And he who does an atom's weight of evil will see it." (99:7-8)[44]

The above verses show that the Quran clearly holds a person responsible for all actions even of an atom's weight. Coercion and compulsion have no meaning at all.

Allah only sends His Messengers to guide people and leave it to them to accept or not. Thus Quran says,

"And say: The Truth is from your Lord; so let him who please believe, and let him who please disbelieve. We have prepared for the iniquitous a Fire, an enclosure of which will encompass them."(18:29)[45]

"Those who believe then disbelieve, again believe and again disbelieve, then increase in disbelief, Allah will never forgive nor guide them in the (right way."(4:137)[46]

"If Allah so desired all those who are in the earth would have believed, all of them would belive. Will you then force people till they are believers?" (10:99)[47]

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[42] Ibid, p.141.

[43] Ibid, p.142.

[44] Ibid, p.143.

[45] Ibid, p.143.

[46] Ibid, p.143.

[47] Ibid, p.144.

"Those who disbelieve after their believing, then increase in disbelief, their repentance is not accepted, and these are they that go astray' (Emphasis added) (3:89).[48]

This shows clearly that Allah does not prescribe death for apostasy. As we know, several historians have misinterpreted the pre Mughal and Mughal period on the above issue, (Apostasy issue) by saying that Islam is an orthodox religion which is not as far as Qur'anic verses are concerned.

However, we have seen that Quran deals with number of subjects at social, cultural, spiritual and moral levels. It deals with subjects not only at the given social but also at moral levels. Therefore, it is important to note that Quran has to be understood not only in the context in which the verses were revealed but also at different levels when these were expressed. However, Quran was a great source of law during our concerned period.

The Sunna

The second major formal source of Islamic law is the Sunna. This word means 'Practise', 'Tradition' or 'Precedent' and derives from stories that relate to the behaviour of the Prophet Muhammad and of his companions. These stories (known individually as Hadith, Plural Ahadith) record the minutiae and detail of how the prophet and his Companions sought to live their lives in accordance with the newly – promulgated religious order propounded by the Qur'an. Particularly important amongst these stories are those which relate to the Prophet himself in which he is not infrequently being asked to arbitrate disputes or decide questions of law.

It was accepted that a new system of law required new norms of behaviour. The lives of Muhammad and his Companions were seen by later generations as exemplary, being influenced by Muhammad's closeness to God. Their behaviour therefore served as a pattern for that of all Muslims. The Ahadith were recalled, recited and recorded, at first orally and later colleted into books. These collections of Ahadith which form the basis of the Sunna are textually a much broader formal source than the Quran. The reason for this is that, while the text of the Quran was finalized very soon after the Prophet's death, in the reign of the third Caliph Uthman (who ordered an authoritative recession to be drawn

[48] Ibid, p.144.

up and all other contradictory texts to be suppressed), the Ahadith were not collected together in book form for at least a century after this. It was only at this stage that the Hadith stories were accepted as an important source and their collection began.[49]

Majid Khadduni, an eminent Islamic Scholar, points out that the pre-Islamic law of Arabia was embodied in a system of customary law, comprising legal and moral principles, known as the Sunna. The Sunna grew out of the custom of the forefathers and its enforcement by practice established its legal validity. Since the structure of pre-Islamic Arab Society, even in the relatively large cities of Mecca and Medina, had not fully become urban, the character of the customary law of the settled population did not essentially differ from that of the tribal population.[50]

A.J.Wensinek talks that Moslem tradition is however, a term which in Arabic is expressed not by one but by two words, hadith and sunna. The former denotes a communication or a tale, in this case, the oral or scribal translation of the saying or actions mentioned; the latter means "use" and "Tradition", in this case, the exemplary way in which Mohammed used to act and to speak. So hadith is the external, sunna the internal side of tradition; hadith is the form, sunna the matter.[51]

In the Quran, the Sunna usually occurs in two connections. Sunnatawwalin and sunnat Allah. In Hadis by sunna is commonly understood Mohammad's sunna comprising his deeds, utterances and his unspoken approval. "Muhammad's sunna in the sense of his words, actions and silent approval is fixed orally and in writing in the Hadis. In theory the conceptions of Sunna and Hadis are different but in practice they often coincide.[52]

The sunna or tradition is a real storehouse of material for the life of prophet and of Muslim institutions. During his life-time the prophet had decided many questions from case to case and his words and deeds and silent approval were reduced to writing and came to be termed as 'Sunna'. These traditions of what the Prophet said and did,

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[49] Edge Ian,(ed.), Islamic law and legal theory, op cit, p. xvii.

[50] Khadduni, Majd, "Nature and sources of Islamic Law" in 'Islamic Law and Legal Theory' (ed) Ian Edge, op.cit., p.88.

[51] Wensinck. A.J. "The importance of Tradition for the study of Islam" in "Islamic law and Legal theory (ed.) by Ian Edge, op cit, p.239.

[52] Shorter Encyclopedia of Islam, pp.273-75.

"gradually laid the foundations of what is now called Islam. And it is to tradition rather to the Quran that we must refer for Mohammadan law.[53]

The group of Muslim jurists called Ashab al Hadis as opposed to those known as Ashab al-Ray, attached greater importance to sunna as a source of law in preference to Ray. The zeal of Ashab al-Hadis led them to forge a number of traditions called Hadis alleged to have been said or done by the Prophet. Most of these traditions were invented in the 8th century A.D. in order to justify innovations and tendencies which were very foreign to the intentions of the Prophet. Eminent Muslim jurists and scholars made compilations of the traditions in the 9th century either according to the chronological order of the successive authors or on the basis of their subject matter.[54]

IJMA

The third source of Islamic law is 'ijma' which means 'consensus'. The technical term 'ijma' comes from a root jama'a, signifying "the totality", "everybody". The verb jama'a means "to bring together" and in the fourth conjugation, jama'a "to agree together". Thus ijma means literally 'unanimous agreement" or "total consensus". Ijma also means consensus on rules of law claimed to be derived from either the Quran or the Sunna. Ijma may take one or two forms which are analytically distinct.[55]

The first connotation of ijma is ijma al umma, "consensus of the people". This refers to cases where a customary rule is adopted by common consent, even though the rule is not to be found either in the Quran or in the Sunna as transmitted in the Hadis reports. The second type of ijma (of far greater practical importance once a systematic Islamic jurisprudence began to develop) is ijma-al-ulama, "consensus of the scholars". This type of consensus is rarely unanimous in practice; it really consists of an agreement to abide by the majority view.[56]

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[53] Dictionary of Islam, p.400.

[54] Muslim Institutions, pp.65-66.

[55] Wegner, Judith Romney, "Islamic and Talmudic Jurisprudence: The four Roots of Islamic law and Their Talmudic Counterparts", The American Journal of legal History, Vol.xxvi, 1982, pp.39-40.

[56] Ibid, p.40.

Al-Shafii defines ijma as the view held by the majority of the Muslims and uses it as a secondary source of elucidation on questions which cannot be decided from the Quran and the Sunna of the Prophet.[57] After some time, ijma was defined as the agreement of the mujtahids of the people (i.e. those who have a right, in virtue of knowledge, to form a judgement of their own) after the death of the Prophet, in any age, on any matter of faith. Ijma thus did not signify the opinion of the masses. The agreement was not arrived at by a council or a synod but was reached 'instinctively and automatically'. As a result of the agreement the points in dispute got settled and each settled point became the essential part of the faith; and disbelief in it came to be regarded as an act of unbelief (kufr).[58]

However, Ijma was regarded as a major source of law and helped in overcoming the difficulties arising from the disputes among Muslim jurists about the rulings and methods of interpretations. "By means of ijma what was at first an innovation, and as such heretical, has been accepted and has over-ridden the earlier sunna. Ijma has not simply fixed unsettled points, but has changed earlier doctrines, of the greatest importance. It is thus regarded by many, within and without Islam, a powerful instrument of reform.[59]

Qiyas

The fourth root of Islamic law is a system of logical reasoning called Qiyas. Although Qiyas came to be called the fourth root only in the classical, post-Shafian period (Shafian himself called Qiyas a "branch" rather than a "root" of jurisprudence), the term itself is pre-shafian. We first find the verb qis, "analogize" in the earliest known post-Quranic legal text, a document called the instructions of Umar b. Khattab to the

[57] Shorter Encyclopedia of Islam, p.613.

[58] Encyclopedia of Islam, II, p.448.

[59] Shorter Encyclopedia of Islam, p.158.

Qadi Abu Musa al-Ashani. Its contents are recorded in text which, though dating from the late ninth century, trace the document back to the early eighth century.[60]

Qiyas, "deduction by analogy" originally signified the derivation of rules of law by analogy with earlier rulings found in the either Quran or the Sunna. The oldest juristic analogies were rather crude. For instance an attempt to fix five dirhams (by analogy with five fingers) as the minimum value of stolen goods which could incur the Quranic penalty of amputation of the hand.[61]

But, later on, analogies became more sophisticated and the art of Qiyas developed into an elaborate system which included many other kinds of rhetorical argument besides analogy.[62]

Al-Shafii says in his Risala that Qiyas is used in the cases which are not dealt with in the Quran, Sunna or ijma. He regards Qiyas is of two kinds, Qiyas-i-Jali or evident and Qiyas-i-Khafi or hidden.[63]

However, the use of Qiyas was permissible only when it was impossible to use these sources or "roots". "If traditions require to be verified by the sacred text, Qiyas does still more so. Quran is the word of Allah, while Qiyas is the work of feeble intelligence.[64]

Shariah Law

Islamic law is in Arabic known as the 'Shariah'. This means 'the right path' or 'guide' and refers to the fact that Islamic law is an all-encompassing set of principles which guides the good Muslim down the right path towards a pure life consistent with Islam, whose reward will be everlasting life in Paradise.[65] Joseph Sachacht says that

[60] Wegner, Judith Romney, "Islamic Talmudic jurisprudence; The Four Roots of Islamic Law and Their Tamudic Counterparts", The American Journal of Legal History, Vol.xxvi, 1982, p.44.

[61] Ibid, pp-44-5.

[62] Ibid, p.45.

[63] Dictionary of Islam, p.482.

[64] Shorter Encyclopedia of Islam, p.226.

[65] Edge, Ian, op.cit., p.XVI.

Shariah is "the core and kernel of Islam itself".[66] Theologically, the Shariah is a God-given law which is immutable and applicable in every age, but as we shall see, a large part of it is now to be found in the writings of medieval Islamic jurists.

Shariah law is nothing but sincere human approach to divine injunctions as contained in the Quran.[67]

The Shariah covers every aspect of life and every field of law international, constitutional, administrative, criminal, civil, family, personal and religious. In addition, it covers an enormous field which would not be regarded as law at all in any modern classification. Every human act is regarded as characterized, to some degrees by hush or qubh, seemliness or unseemliness, conformity or deformity; and these qualities can only be known by divine revelation. Everything from murder to social etiquette, and from incest to the rules of religious retreat – is thus evaluated, and may be classified as coming under one of the five categories of things commanded, recommended, left legally indifferent, reprobated, or forbidden by God Himself. In large part this system is, of course, such as no human court would attempt to enforce, and any sanction, in these cases, can only be exacted at the bar of eternity: but, enforced or unenforced, this whole system of duties forms part of the sacred law.[68]

Thus Shariah stands supreme, exacting one standard, prescribing unified norms and exercising- in- theory – an exclusive authority over every aspect of life.[69]

Regarding the origin of the Shariah, it seems to have developed only around the turn of the first century of the Muslim era. However, it was only with the establishment of the 'Abbasid dynasty, moreover, with its ostentatious championship of the Shariah, that the law schools crystallized, that the classical theory of jurisprudence won acceptance, and that the office of "Qadi" became officially at least – reserved for those

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66 Schact Joseph, An Introduction to Islamic Law, Oxford University Press, 1964, Delhi, p.1.

67 P-2

68 Anderson, J.N.D., "Law as a Social Force in Islamic Culture and History" in Ian Edge (ed.), book, op.cit., p.488.

69 Ibid., p.491.

learned in the sacred law which this office particularly, and in theory exclusively, came to serve.[70]

There are different opinions on Shariah. Some people say that Shariah is progressive or some people say, it is not progressive. The Sufis held different views and Ulema adopted some traditional views. These Ulema adopted theocratical idea of state, while Sufis developed brotherhood ideas. These are who think differently.[71]

Thus, we have seen that four roots of Islamic laws are: Quran, divine scriptural revelations; sunna, oral traditions from the Prophet; Ijma, consensus of the jurists, and Qiyas, the juristic method of logical argument.[72]

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[70] Ibid., p.492.

[71] J.N.D., Anderson discusses greatly the Shariah by referring several scholars opinion. He discusses the issue of Islamic State, Progressiveness or Negativeness of Shariah, Problems of Sharia and so on. See his article "Law as a Social Force in Islamic Culture and History" in (ed.), book of Ian Edge, Op.cit. Asghar Ali Engineer also holds different views on Quranic teachings and Shariah. See his book, Islam, op.cit.

[72] Wegner, Judith Romney, 'Islamic and Talmudic Jurisprudence', AJLH, vol.xxv, 1982, p.30.

Islamic Jurisprudence or Fiqh

Fiqh meaning 'intelligence, knowledge', denoted Muslim or Islamic Jurisprudence, The term covers all aspects of religious, political and civic life. It includes criminal laws regulating the administration of the state and the conduct of war.[73]

Fiqh (also spelled Fikh) is the Arabic term for positive law. Joseph Schact points out that, "Islamic law is the epitome of Islamic thought, the most typical manifestation of the Islamic way of life, the core and kernel of Islam itself. The very term Fiqh 'knowledge', shows that early Islam regarded knowledge of the sacred law as the knowledge par excellence."[74]

Bernard Weiss holds the view that, the term fiqh, which was usually rendered as "Jurisprudence", originally was used much in the same sense as "ray" There was no doubt that a great deal of the positive law of Islam stems from this early 'ray,. However, an essential characteristic of Islamic jurisprudence was that it eventually set aside the relatively unrestricted, discretionary 'ray' in favour of a more constrained, text-oriented approach to the exposition of law. The text-oriented approach was regarded as the only true means by which Islamic law historically developed. The classical Muslim jurist was guided, not by intuition, but by dalil, by textual evidence. Fiqh becomes more conceptual knowledge than intuitive perception.[75]

Another Islamic scholar Goldziher holds the view that, "even the names of legal speculation (Fiqh – intelligence) and of its students (Fuqaha' – intelligent) have been influenced by the Latin term juris (prudentia) and jurist (prudent) in their special application to the study of law and teacher of law.[76]

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[73] Encyclopedia of Islam, II, p.101; Shorter Encyclopedia of Islam, p.102.

[74] Makdisi, John, 'Legal Logic and Equity in Islamic Law', The American Journal of Comparative Law, Vol.33, 1985.

[75] Weiss, Bernard, Interpretation in Islamic Law: The Theory of IJTIHAD, The American Journal of Comparative Law, Vol.26, 1978, p.202.

[76] Encyclopedia of Islam, p.102; Shorter Encyclopedia of Islam, p.103.

Kremer is of the opinion that even many of the provisions of Roman law adopted by Islam found a place in the Muslim Jurisprudence through the intermediary of the Jews. [77]

However, in terms of origins of Islamic Jurisprudence, Joseph Schact said that, the origin of Islamic jurisprudence to the second century of Islam,that was about one hundred years after the Muslim conquest of Mesopotamia in 637 A. D. (When the region was renamed Iraq). This region had previously been part of the Persian Empire, with its centuries- old tradition of formal law making and jurisprudence. Schact concluded that "Mohammaden jurisprudence originated in Iraq. "The discovery that Islamic jurisprudence emerged on the banks of the Euphrates and not on the sands of Arabia, home of the prophet and birthplace of Islam, clearly invites further investigations.[78]

Schools of Law

Joseph Schact points out that, the foundations of Muhammaden law were laid down in Medina in the first century of the Hegira by persons who applied religious norms such as those expressed in the Quran and in " Traditions" from the prophet, to the customary law of Medina.[79] The first such attempt said to be on record to Codify the Islamic law was the Majmua' of Zaid bin 'Ali (died 740 A. D.), founder of Shia sect of Zaidiya.[80]

The Muwatta of Malik bin Anas (715 – 95 A. D.), is recognized as the oldest corpus juris of the Sunni Branch of Islam. It developed later on as theological centre of Medina in Hijaz. In Iraq, Hammad bin Suleman became the pioneer of another school of fiqh. Iman Abu Hanifa belonged to this School and was placed on a firmer footing by his two great pupils, Abu Yusuf (died 795 A. D.) and Mohammad bin al – Hasan - al - shaibani (died 804 A. D.). Almost at the same time, fiqh was being systematically

[77] Encyclopedia of Islam, II, p.102; Shorter Encyclopedia of Islam, p.103.

[78] Schacht, Joseph, The Origins of Muhammadan Jurisprudence, (Oxford, 1950, 1979, (ed.), p.190.

[79] Schacht, Joseph, "Foreign Elements in Ancient Islamic Law", in Islamic Law and Legal Theory (ed.), by Ian Edge, 1996, Dartmouth, p.5.

[80] Shorter Encyclopedia of Islam, p.104; Encyclopedia of Islam, p.103.

developed in Syria by 'Abd al – Rahman al – A wzai (died 774 A. D.), Sufyan al – Thawri (died 778 A. D.) was yet another important teacher belonging to the Iraqi school of fiqh. [81]

However, freedom in legal speculation set on the foot of the movement to develop into a variety of schools, each led by a distinguished Mujthahid, around whom a large number of disciples gathered and discussed questions of law. Although these leading jurists often attacked each other, as in the case of Abu – Hanifa and his critics, there was on the whole a tolerant attitude on the part of the Muslim community towards their leading jurists, believing that inspite of differences on matters of positive law (furu) they all sought the truth, each according to his light. But lack of direction in the ijtihad (Independent judgement) and "disagreement" tended to multiply the schools and to accentuate the rivalry among the followers. During the second and third centuries of the Islamic era (the eighth and ninth of the Christian era) the Islamic world was abounding with a great number of schools of law, major or minor. These schools varied from the liberal Hanafite and Mutazilite jurists - permitting large measures of independent judgement – to the conservative Zahirite and Hanbali jurists who, not only rejected ijtihad , but also insisted on a literal interpretation of the Quran and hadith

Each school consisted of the out set of a group of disciples who followed their master in giving certain answers to specific questions, practical or speculative. [82]

However, in the fourth century of the Islamic era, only four schools were recognized, namely, the Hanafi, Maliki, Shafii and Hanbali schools. [83]

1. The Hanafi School

The Hanafi school has been named after Imam Abu Hanifa, the patriarch of the 'Iraqi School. Abu Hanifa was born at kufah, in Iraq, in the year of 80 of the Muslim Calendar, which corresponds to the year 700 A.D. He was born at a time when

[81] Ibid., pp.103-4; Ibid.; pp.104-5.

[82] Khadduni, Majid, Nature and Sources of Islamic Law, the George Washington Law Review, in Ian Edge (ed.), pp.17-18.

[83] Ibid., p.19.

Umayyad glory was at the highest level and its ruler 'Abd al – Malik b. Marwan was ruling.

Abu Hanifa was described as tall, of medium weight, with fine beard and of great impressiveness of bearing. He was always well- dressed and serious talker. He did not prefer light talk, never laughed and seldom smiled. He was by occupation a silk – merchant, with a shop in kufah in a house belonging to one' Amr b. Huraith, one of the companions of the prophet. However, it was through the influence of al – Imam al – Shafii , a scholar of reputation at that time, that Abu Hanifa was led to take – up the study, first theology, then, a year later, canon – law (fiqh). At that time, Abu Hanifa became firmly established as teacher, his reputation grew, and his following became extended until he had the most numerous following in the city of kufah. He came to be regarded as a leading fiqh scholar and a great logician and oracle of Sunni jurisprudence. Abu Hanifa has given his own logic regarding wadu (ablution), prayers, reciting Quran, divorce and marriage, social economy and so on.

Abu Hanifa had many, famous pupils like Abu Yusuf, Muhammad b. al – Hasan, known as al-shaibani and Zifr b. al-Huzail, and he died in Baghdad in 767 A.D[84].

Hanafi school played a very predominant role in Islamic law and developed many legal Hanafi texts.[85] Hanafi became very famous in Iraq, Syria, Egypt and Turkey. [86]

Thus Hanafi school has the credit of being the first to present questions of fiqh for discussion and solution, and that the school also was the first to record and classify and arrange cases. According to many people that, "Abu Hanifa worked on quite new principles and erected a very tolerant system in which he made the greatest concessions to the speculative method of deduction (Qiyas) is quite unfounded .... In any case, there is in general no real difference of principle among the different fiqh schools in Islam." [87]

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[84] Adams, C.Charles, 'Abu Hanifa, Champion of Liberalism and Tolerance in Islam' in Ian Edge (ed.), Islamic Law and Legal History, pp.377-387.

[85] Encyclopedia of Islam, I, pp.90-91; Shorter Encyclopedia of Islam, pp.9-10; Dictionary of Islam, p.570; Neel J. Coulson: The Thought Quarterly, No.40, p.20.

[86] Adams, C. Charles, p.226.

[87] Ibid., p.387.

2. The Shafii School

The founder of this school or Mazhab was Mohammad bin al-shafii. He was a Hashimite belonging to the tribe of the Quraish and was thus remotely connected with the prophet.

Muhammad ibn – Idris al – Shafii was born in 767 A. D. in Palestine, in either Ghaza or Askelon. Taken as a child to Mecca, he later distinguished himself at the feet of the jurist Malik in Medina. After Malik's death, shafii traveled widely, both to Syria and to Iraq, where he met the famous jurist shaybani of the Hanafi school. Shafii spent his final years in Egypt, where he completed the Risala, a work begun in Iraq and destined to have profound effect on the development of Islamic legal theory[88]

It was generally believed that, al–shafii laid down for the first time the theory of law in a systematic form. His contribution to jurisprudence was claimed by his biographers to resemble the work of Aristotle in logic and work of Al-khalil b. Ahmad in prosody.[89]

In the Risala, shafii postulates the existence of four sources of law: 'Legal authority may consist of

1. Communication in the book, i. e., Quran or
2. The Sunna; or
3. Ijma; or
4. Qiyas

Except first of these, Shafii invested each of these concepts with a new significance, relating them each other in ways that were radically new in Islam. His notions had direct parallels in Talmudic law.[90]

Al-shafii, studied the Quran deeply, says that it was the basis of all legal knowledge. He thought that the Quran contained guidance for any occurrence (nazilah) which might befall a Muslim. After reading Quran, he specified legal provisions such as

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[88] Wegner, Judith Romney, 'Islamic and Talmudic Jurisprudence: The Four Roots of Islamic Law and Their Talmudic Counterparts', The American Journal of Legal History, Vol.xxvi, 1982, pp.50-51.

[89] Hasan, Ahmad, Al-Shafii's Role in the Development of Islamic Jurisprudence, Article in 'Islamic Law and Legal Theory', (ed.), by Ian Edge, op.cit., p.239.

[90] Wegner, op.cit., pp.50-51.

prayer, zakat, pilgrimage, and fasting, and clear prohibition from certain evils like adultery, drinking, eating blood, carrion and swine flesh. The second includes certain duties whose details were explained by the sunnah of the prophet like the number of the prayers, amount on which Zakah falls, and the time – limit for the payment of Zakha. The third consists of the legal provisions established by the prophet and not provided by the Quranic text. This was based on the authority that the Quran made the obedience of the prophet obligatory on Muslims. The fourth comprised the rules derived through Ijtihad. [91]

Al-Shafii classified the Quranic statements into two: general (amm)and particular (khass). He said that there were certain statements which were absolutely general, and intended to be general; there were others which were general and were intended to be so' yet refer to certain particulars as well. [92]

The most controversial point between the early schools and Al-Shafii was the concept of the Sunnah. The early schools took the established usage of the Muslims and the practised traditions as Sunnah. Al-shafii launched a movement to eliminate this practice. He validated solitary traditions from the prophet and proved that Hadith was the only channel for knowing the sunnah of the prophet. The bone of contention between him and the early school was the solitary traditions (Khabaral-Wahid). [93]

In order to understand the shafii scheme of Ijma, Shafii says that it should recognize the theoretical and practical need for a global ijma if a unified sunna were to be achieved. Shafii's theory of ijma was set down in the Risala. He discussed both notions of consensus, the ijma of people and ijma of the scholars. He assigned a higher value to former, stated that the ijma of the people was the only kind truly deserving the name.[94]

There were three salient features in Shafii's treatment of Qiyas. These were his rankings of Qiyas below the other three sources of law; his promotion of qiyas over ray

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[91] Hasan, op.cit., p.240.

[92] Ibid., p.241.

[93] Ibid., pp.241-42.

[94] Wegner, op.cit., p.56.

as the better form of legal reasoning; and his introduction of several 'new' types of argument under the rubric of Qiyas.[95]

Thus, the Shafii school played a very significant role in the Islamic law. His teaching is still eagerly studied in Azhar Mosque. It is even now predominant in South Arabia, Bahrin, The Malay Archipelago, the former German East Africa and some parts of Central Asia.[96]

3. Maliki School

Maliki school was named after Malik bin Anas. He probably was born in about 710 A. D. at Medina, where he spent most of his life, he got in trouble with the Government, received flogging at the hands of the governor and suffered a dislocation of shoulder. He died in 795 A.D. at the age of 85 in Medina. Many details of his life were buried in fiction . His fame rested Chiefly on his Muwatta, which received a surprising Success. One of the main objects in his juristic thought that appears in 'Muwatta' is the permeation of the whole legal life by religious and moral idea. This work recorded the usual consensus of opinion in Medina and became authoritative as the expression of compromise.

'Muwatta' was his main achievement. It can be regarded as evidence of the stage reached in the general development of Muslim law of this time.

4. The Hanbali School

The Hanbali school was named after Ahmad bin Mohammad bin Hanbal, the celebrated Islamic theologian. Ibn Hanbal was born at Baghdad in November 780 A.D. In that city he attended the lectures of Al-Shafii and received instructions from his traditions .He attained great fame from his profound knowledge of both civil and Spiritual laws..

Majid khadduni Says that Hanbalites opposed not only ijtihad, but also rejected all forms of Qiyas and sought to find all the answers to their problems in the Hadith.

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[95] Ibid., p.58.

[96] Encyclopedia of Islam, IV, pp.252-53; Shorter Encyclopedia of Islam, pp.512, 613-14; Dictionary of Islam, p.570; Nell J. Coulson: The Thought Quarterly, No.40, p.20.

Even the ijma, which had been established as an infallible principle, ranked in their eyes inferior to weak Hadith.

The Hanbalites followed the rigidity and austere life which was opposed by the Hanafi and Shafii. The Hanbalitis were against state gift or any post.

Ibn Taymiyyah (A. D. 1260 – 1327), a great Hanbali jurist who developed interest in Hanbalism, was adopted by the wahhabi movement of Arabia as the official creed of the movement.

This mazhab was much more widely spread in the countries of Islam till the 14^{th} century A.D. The rise of the Ottoman power dealt Hanbalism a very severe blow and set it on its way to decline.

Source of Law: Shiah Tradition

The Shiahs, as are well-known, have the very greatest reverence for 'Ali, - a reverence, which if not greater, is yet more in evidence, than that which they show towards Mohammad himself. 'Ali's father, Abu Talib, and Mohammad's father, 'Abdullah, were brothers, so Mohammed and 'Ali were first cousins. 'Ali married Fatimah, the daughter of Mohammad, from whom come the only lineal descendents of Mohammed. According to Shi'ah tradition, Mohammed designated 'Ali as his successor, made him the repository of his wisdom and knowledge, and enjoined upon his followers the observance of the rights of 'Ali and his House in the strongest possible terms. The chief point of dispute between the orthodox Sunni Mohammedans and the Persian Shi'ahs concerns this very point. The former maintain that Abu Bakr, 'Umar and 'Usman were usurpers, who kept 'Ali out of his just rights., The Shi'ahs, therefore, refuse to recognize them and curse their memory, and regard 'Ali as the first rightful successor of Mohammed. 'Ali's short reign of five years was full of warfare and troubles, caused by the opposition of the rival party of the Umayids, and ended with his assassination in the mosque at Kufah. 'Ali's eldest son, Hasan, only reigned six months, and then abdicated in favour of Mu'aviyah, son of Aby Sufyan, and head of the rival House. Hasan's younger brother, Husain, was invited by numerous factions among the inhabitants of Kufah to revolt against Yazid, the son of Mu'aviyah, who had succeeded his father, and started from Mecca with this object in view. But he was intercepted by a captain of Yazid's and slain at Karbala, with his household of seventy-two persons. Thus the temporal headship of Islam passed from the House of 'Ali, and its place was taken by a succession of religious leaders twelve in number, known by the name of the Twelve Imams. 'Ali and his two sons, Hasan and Husain, are reckoned as the first, second and

third in order of sacred hierarchy; while the twelfth is the concealed Iman Mahdi, who it is believed will appear again at the end of the world. These Iamams are regarded as inspired guides, the sources of divine wisdom and knowledge. The memory of 'Ali, whose best-known title is Amiru'l-muminin (Prince, of Commander of the Faithful), and his younger son Husain, commonly known as Saiyidu'sh-Shuhada (Prince of the Martyrs), has taken a very strong hold on the imagination of the Persians. Their devotion is maintained by the annual recitation of Passion Plays, depicting the death of Hussain and his family and followers. The devotion of the Persians to 'Ali si also evinced by the invocation of his name when anything difficult or arduous has to be done, or when a man or an animal stumbles, etc. It is also written as a lucky motto over shops or the doors of houses, and is a common cry of the dervishes or religious beggars. It is to be seen from afar blazoned in large white letters on one of the mountains overlooking Kerman.

The exalted position held by 'Ali in the eys of the Shi'ahs comes out very clearly in the Hyat-ul-Kuloob and in Mr. Merrick's book, which is in part a free translation, and in part an abridgement, of the original Persian, with an Appendix containing many copious notes. The perusal of either of these will give a very good idea of the religious ideas of the majority of the Persians, especially those which centre round 'Ali. The subject is, therefore, of considerable interest. And as the book is very scarce, a brief account of the chief things which it has to say about 'Ali may perhaps prove not unwelcome.

There are perhaps few places in tradition where a free rein is given to the play of fancy that where it undertakes to throw light on the state of 'Ali before his birth. Mohammed said, "Myself and 'Ali were created one light, and we ascribed glory to God on the right side of the empyrean two thousand years before God formed Adam." Mohammed also declared that he himself (with 'Ali, Fatimah, Hasan, and Husain) was created before the creation of any other thing. God uttered a word from which He formed light. He then pronounced another word from which He formed spirit. He next tempered the light with the spirit, and then formed the sacred Five, who ascribed praise to God when there was no other existence to give Him glory. When God willed to create the universe, He expanded the "light" of Mohammed, which was created from God's light and represented the soul of Mohammed, and from it formed the empyrean. Similarly after this the lights of 'Ali, Fatimah, Hasan and Husain were expanded, from which were formed in succession the angels, the heavens and the earth,and the moon, and lastly from the light of Husain, paradise and the Hurs were formed. Another account says, on the authority of Imam Mohammed Baqir, that the Most High formed Mohammed of clay, which clay was a gem under the empyrean. From the excess of the clay were formed in succession 'Ali, the college of Imams and the hearts of all the Shi'ahs. The compiler of the Hyat-ul-Kuloob remarks that the traditions about the creation of the lights or spirits of these exalted personages are numerous and discordant!

After the creation of Adam, the Most High caused the light of 'Ali to appear on Adam's middle finger , and the lights of the rest of the sacred family on his other four fingers. "The beaming radiance on these lights was like the sun, so that the heavens and earth, and empyrean and throne, and the curtains of the tabernacle of greatness and glory, were by it illuminated." The light of Mohammed and 'Ali was placed in Adam's loins and transmitted from generation to generation through pure progenitors, until it came to their grandfather, 'Abdu'l-Muttalib, when it was divided into two parts, Mohammed's light being placed in the loins two parts, Mohammed's light being placed in the loins of his father 'Abdu'llah, and 'Ali's in those of Abu Talib. The Mohammedan light continued with Adam until the conception of Shith (Seth), when it was transferred to Hawwa (Eve). At the birth of Shith it shone upon his forehead, and in the same way it was passed on from one to another of the progenitors of Mohammed, until it arrived at the forehead of Mohammed himself. Before the conception of 'Abdu'llah, and also of Fatimah, the traditions relate that the father was made to partake of the water and food of Paradise by angelic or other agency: This being preliminary to the transference of the Mohammedan light.

The coming of 'Ali was foretold by the astrologers and magicians of that epoch, and it is also alleged that his name occurs in the Sacred Books. In the age preceding of Ali' there lived a very famous soothsayer, surnamed Satih. His body was destitute of bones, except the skull. He used to be rolled up like a garment, and taken wherever he wished to go, and then unrolled and laid on a mat. He surveyed the heavens almost incessantly, and took very little sleep. He was transported in a basket to the presence of Kings who wished to consult him. In this night vigil, he beheld fearful portents in the heavens, foretelling the advent of Mohammed and 'Ali, and conspired with Zarqa, queen of Yemen and the most famous magician of that country, who had also seen the heavenly portents, to quench the prophetical light before it should burst forth in the world. Arrived at Mecca, Satih conceals his real intentions from the chiefs of the Quraish, and foretells to the sons of 'Abdu'l-Muttalib the appearance of the illustrious chieftain and valiant champion 'Ali, whose name, he declares, in the Taurat (Pentateuch) is Siriya, in the Injil (Gospel), Iliya, (Elijha), and among his own people, 'Ali. This reckless identification of Ali with Iliya may be compared with the assertion that Mohammed is foretold under various names in the Scriptures. Ham, a demon, and alleged to be the great-grandson of Iblis (Satan), is also made to aver that 'Ali's name is in the Sacred Books. He was, it is said, the only true believer among the demons. One day he came to Mohammed in the guise of a gigantic man of terrible appearance and asked for religious instruction. Mohammed handed him over to 'Ali, at which Ham demurred. But on learning who he was, Ham was quite satisfied and remarked that he had seen his name in the Sacred Books, which is also called Iliya.

High opinion is also entertained of 'Ali in heaven. Adam beholds the name of 'Ali with those of the other Imams inscribed upon the empyrean. During Mohammed's night journey to heaven (mi'raj), he beheld the similitude of 'Ali and the rest of the Imams on the right side of the empyrean, all performing prayers in a sea of light. 'Ali's similitude in heaven is created of divine light. At his martyrdom it appeared as if wounded, wherefore the angels who visit 'Ali's celestial likeness morning and evening, curse the assassin. 'Ali's image has been placed by God near the Sidratu'l-muntaha. This is the loto-tree of Paradise, the circumference of which is a hundred years' jounry of terrestrial time: it has its roots in 'Ali's celestial palace, and one of its leaves would cover all the people in the world. God did this in order to satisfy the burning desire of the angels to behold 'Ali. They humble themselves and bow before the image. Whatever Mohammad, whose similitude is also in heaven, and 'Ali command, the angels perform; and whatever they ask of God He grants. During Mohammed's night journey to heaven the angles inquired so particularly about 'Ali, that Mohammed began to conclude that 'Ali was better known in heaven than himself. The angel of death will not take the souls of Mohammed and 'Ali, but God Himself will do so. Mohammed beheld a personage in heaven whom he supposed to be 'Ali, and began to address him, whereupon Gabriel explained that it was an angel created in 'Ali's likeness, and when those angels who are privileged to approach near the Deity wish to behold 'Ali, they visist that angel. The angels enjoy their exaltation by loving Mohammed and 'Ali. Those angels who helped the Mohammedans at the battle of badr, all had the form of 'Ali. The previous prophets whom Mohammed saw in heaven, and questioned as to their exalted rank, replied , "We were raised up on account of your prophetical office, and the imamate of 'Ali, son of Abu Talib, and of the imams of your posterity." Mohammed and 'Ali are the only prophets to whom God has given two of His own names (Mahmud and 'Alia-i.e., Praised and Most High). God spoke to Mohammed in heaven in the language or style of 'Ali. The twelve Imams are declared by God to be His "proofs, vicegerants and friends." Mohammed said on one occasion, "God has sworn by His own holy nature, that whoever humbles himself before 'Ali to the degree of a hair's breadth, thereby exalts his rank in paradise a hundred thousand years' journey." When 'Ali once expressed his very great affection for a certain chapter of the Koran (Surah 112), Mohammed exclaimed, "Verily, were it not that I fear a sect of my followers will say of you, what the Nasara (Christians) affirm of 'Isa (sc. Of the divinity of Jesus), I would this day declare some things in your praise, so that you would pass no company that would not gather the dust on which you tread, for the blessing it confers." This shows of caution, however, has not prevented the natural consequences of the extravagance of the traditions concerning 'Ali. The Persian sect of the 'Ali-Ilahis maintains that the Deity was incarnate in 'Ali. In Luristan, among the Deity was incarnate in 'Ali. In Luristan, among the Kurds, in the district of Kemanshah, and among the tribe of Hazarah, scattered about Kabul and Qandahar, are found members of this sect, or of the kindered sect of the Nusairis. Nusair, as the Shi'ahs

say, addressed 'Ali as divine, and was smitten to death by him for the blasphemy. Upon 'Ali's prayer, at the earnest request of the relatives, Nusair was restored to life, when he immediately exclaimed, "O' Ali, I believed you to be divine before, but now by your restoring me to life I know you to be Deity."

It is asserted moreover that whenever 'Ali fought in the cause of God, Jibrail (Gabriel), attended him on his right, Mikail (Michael) on his left, and Israfil in rear, while the "angel of death" ('Izrail) marched before him. The great idol Hubal in the Ka'bah prostrates itself on its face before Mohammed and testifies to the imamate of 'Ali. On different occasions, rocks, trees and a lizard salute 'Ali by his name and titles, testify to his imamate and proclaim his glory and excellencies, or declare the felicity of his friends and the fate that awaits his enemies. More marvelous still, there was a thorn-tree of the desert, which had grown to an enormous size and exhibited other astonishing properties after Mohammed had poured at its foot the water with which he had performed his ablutions and gargled his mouth. At Mohammed's death this tree cast its fruit, but subsequently yielded fruit, although smaller and less delicious. After a period of thirty years its fruit fell again, little of its verdure was left, and its beatify departed, and soon the intelligence arrived at the martyrdom of the "Commander of the Faithful." On the day of Husain's martyrdom it became perfectly dry, fresh blood sprang up under it and bloody water distilled from its leaves. At the death of 'Ali, angels were sent down to assist at the funeral preparations and the interment, as was the case also at the decease of each succeeding Imam, as well as of Mohammed himself.

'Ali is, of course, reputed to have performed many miracles, most of them in conjunction with Mohammed. Certain infidels were raised to life at 'Ali's prayer, and bore testimony to him. In answer to a Challenge from some of the unbelieving Quraish, 'Ali at Gabriel's command cursed ten of them, who immediately became afflicted with gangrene, leprosy, blindness, palsy and convulsions, but were healed on repeating a prayer asking for cure for the sake of Mohammed and 'Ali and their pure family. The stores of wheat, barley, dates and raisins, belonging to an unfilial young man, were changed to putrid masses, and his money to stone, by Mohammed and 'Ali. At the prayer of 'Ali in the name of Mohammed and his family, a camel spoke and disclosed her master's crime. At 'Ali's prayer a stone was transmitted to gold to pay a debt owed by a distinguished Mohammedan to a Jew.

'Ali's deeds of prowess are also solemnly recorded. At the defeat of the Mohammedans at Uhud (Ohod), 'Ali's valour was conspicuous. When his sword was broken, Mohammed gave him his own weapon "Zu-l-faqar," with which 'Ali slew all who attacked Mohammed. 'Ali received ninety, or, as some traditions say, forty wounds all in front. At Khandaq, 'Ali kills the infidel champion, 'Amir, by stratagem. Having distracted his attention, he cut off both his legs at a single blow. During the expedition against the Bani Mustalaq, 'Ali drove a clan of jins, "like Zinkis" (Zanzibaris of negroes),

from a certain wadi where they had taken up their abode. At the conquest of Khaibar, besides other deeds of strength and bravery, 'Ali slays the Jewish champion, Marhab, his second blow cleaving the stone ring on the helmet of Marhab, the helmet itself and his head, crying as he did so, "Allahu akbar." At 'Ali's prowess the angels in heaven shouted in astonishment, and Gabriel was commanded by God "to sustain the excess" of that Hashim like blow, lest it should cleave the earth in twain. "the blow," said Gabriel, "fell vastly heavier on my wing than the weight of the seven cities (which Gabriel, when ordered to destroy the people of Lot, took up from the earth and carried upon single feather of one of his wings), nothwithstanding the fact the Michael and Israfil both caught 'Ali's arm in the air to check its force."

'Ali was sent on different missions by Mohammed. There was a certain tribe of jins, called the Bani Bijah, living beneath the ground. Some of them became believers, and quarrels arose about water and pasturage between them and their unbelieving brethren. So 'Arfatah, one of the jins, came in the midst of a whirlwind to solicit Mohammed's intervention. When he disclosed himself his appearance was most strange, as he had much hair, a high head, prominent eyes which opened laterally, small eye-sockets, and teeth like a beast of prey. Undeterred by the messenger's unprepossessing appearance, 'Ali accompanied him, offered the unbelieving jins three conditions, and on their rejection slew eighty thousand of them, whereupon the rest of them became Musalmans. On another occasion 'Ali was sent to Yemen with a letter from Mohammed, and within one day the whole tribe of Hamadan became Mohammedans, and the conversion of the rest of Yemen followed.

God once gave Abraham an ark in which were cells for all the prophets and all their wazirs. Abraham broke open the cells, and in the last found Mohammed, by whose side was 'Ali, represented by a gigantic portrait beaming with light, and with his hand resting on Mohammed's girdle. On the portrait was the inscription, "This is the similitude of the wazir of Mohammed, and who is aided by divine victory" (? Help). In answer to Abraham's inquiry, God declared that Mohammed and 'Ali were blessed and made immaculate, and chosen with their offspring before creation because of the goodness and purity of their hearts. Mohammed will deliver to 'Ali "the banner of praise," which he will receive from God. Under the standard will be marshaled every prophet, righteous person and martyr, all of whom 'Ali will conduct into Paradise. 'Ali is the gate of the city of knowledge, the gate of Mohammed's wisdom, which he will spread abroad. Before sending him on his mission to covert the people of Yemen, Mohammed gave to 'Ali, who was different on account of his youth and inexperience, a slight blow on the chest, saying, "On Lord, guide his heart!" After this, "Ali affirmed that he never afterwards had the least doubt respecting any judgement he pronounced. 'Ali, when weighed in scales brought from heaven against the whole multitude of the Moslems, outweighs them all. Mountains salute Mohammed and assure him of victory

over all his enemies with the aid of 'Ali. He is so stalwart a champion of the faith that there were all the inhabitants of heaven and earth to become infidels, God by him would sustain the true faith. One day a rude Arab named Bura greedily partook of a poisoned shoulder of mutton, which had been placed before Mohammed, before being invited to do so, and died in consequence. After the funeral, at which 'Ali prayed that God would forgive Bura, Mohammed assured the relatives that a magnificent inheritance was Bura's in Paradise, and added that the Most High declared that "if Bura's sins had exceeded in number the sands, particles of dust, drops of rain, leaves of trees, hairs of animals, glances of their eyes, their breathings, motions and steps, all would have been pardoned at the prayer of 'Ali." On the other hand, if empyrean, and still harboured an atom of enmity to 'Ali, his only reward from God would be that of vengeance. It should, however, be noted that, in spite of all the exaggerated praise of 'Ali, Mohammed's precedence is safeguarded in many places. Nor can 'Ali's sinlessness be maintained in the face of such a tradition as the following, which says that Mohammed saw in similitude all his sect, and addressing 'Ali said, "I saw and implored forgiveness for you and your Shi'ahs."

According to Shi'ah tradition, Mohammed took great care during his lifetime to secure a pre-eminent position for the sacred family, which besides himself included his daughter Fatimah, her husband 'Ali, and their two sons Hasan and Husain. Only these were permitted to partake of the table sent down from heaven to Mohammed laden with viands and fruits of Paradise. After the conquest of Mecca, Mohammed sent herald to the Christians of Najran amongst others, summoning them to embrace Islam, pay tribute or prepare for war. Upon this a controversy ensued at Najran, and a deputation was sent to wait upon Mohammed, the chief point at issue being whether the Christians or Mohammedans were right in their opinions about Jesus, the latter holding Him to be no more than a prophet. At last it was decided to make an appeal to God, and invoke His curse on whichever party lied. At the time appointed, Mohammed took with him to the ordeal only 'Ali, Fatimah and their two sons, next to Mohammed "the most exalted of mankind," and sat down with them under a cloak which had been spread over two small trees and the space between them swept.

The night after Mohammed's death, God sent an angel to comfort the bereaved family with the consideration that all must die, and the assurance that they were particularly chosen and favoured by the Lord.

At the Day of Judgement all men will have to pass over the bridge named Sirat. In the Haqqu'l-Yaqin, another of Majlisi's works, it is said that a part of this bridge, in length three thousand years' journey, is excessively difficult. Mohammed and 'Ali will be the first and second to pass it. And none will pass it without great difficulty except Mohammed and 'Ali and the family of the prophet, who will traverse Sirat together "like the leaping lightning."

Various instances occur where blessing and help are said to have been received through the invocation of blessings on Mohammed, 'Ali, and the sacred family. It is asserted that Adam, after his fall, through humbling himself before Mohammed and his family, was saved and delivered from his fault and shame an dishonour; and by taking refuge in the name of spirits of Mohammed and his family, Adam enjoyed the utmost degree of safety and pardon through them.

From the traditions cited in the Hyat-ul-Kuloob, after marking every allowance for later additions and exaggeration, it seems clear that Mohammed used every means in his power to secure the succession for 'Ali. Mohammed declared that Gabriel, when he descended from Heaven with Michael and Israfil to invest Mohammed with the prophetical office, pointed out 'Ali to Israfil as Mohammed's "brother and successor." When the people of Medina objected to 'Ali being left in charge there while Mohammed was absent on a military expedition, Mohammed consoled him with the consideration that he was his brother, holding in respect of him the rank of Aaron to Moses, and that he would be Khalifah among his people. Mohammed associated 'Ali with himself in the sacrifies he offered in his last pilgrimage to Mecca. During the return journey Mohammed halted at a place named Ghadir-i-Khum at which caravans never stopped, as it has neither water nor pasturage. The express object of this was to solemnly inaugurate 'Ali as his successor, in accordance with the divine command. The pack-saddles of the camels were piled together to form a sort of pulpit (some traditions say it was of stone, and Mohammed ascending this made a long oration to the people, and in the most explicit terms announced 'Ali as his successor. "Know ye then," he said, "O people, that the Lord of the universe has ordained 'Ali your prince and ruler, your imam and leader, and has made obedience to him obligatory on Muhajirin and Ansar (i.e., those who accompanied Mohammed on his flight from Mecca to Medina, and those of the citizens and inhabitants of the desert, on Arabs and 'Ajamis (i.e., Persians), on free and bond, small and great, white and black, on all who worship God in the unity of His nature. Over all these the authority of 'Ali extends and his orders reach. Whoever disobeys him is accursed, and all that render him due obedience shall enjoy the mercy of God, "--- and much more to the same effect. The covenant was then solemnly ratified by the leading Mohammedans and the whole multitude of those present, by shaking hands with Mohammed and 'Ali. After his return to Medina, Mohammed authoritatively commanded all his wives to render obedience to 'Ali as his successor, and spoke much about the same subject in his addresses to the people and in many assemblies. Mohammed further declared that, when he met his followers after the Resurrection at the foundation of Kausar, he would demand of them what their conduct had been towards the two great things he had left among them, viz.: the book of God and his family. And during Mohammed's last illness 'Ali was again pointed out in the plainest terms as his successor and kahlifah.

Mohammed further tried to remove from Medina before his death those whom he knew to be opposed to 'Ali's succession, some four thousand in number. He accordingly ordered them to retire to the frontiers of Syria, and appointed Usamah-ibn-i-Zaid their general. So unwilling were they to start, that they had to be forcibly compelled to quit Medina. But all Mohammed's careful plans proved to be of no avail. While the army was still in the neighbourhood of the city, Mohammed was attacked with what proved to be his last illness, and Abu Bakr and 'Umar, who were kept informed of the progress of Mohammed's sickness by 'Ayishah, returned secretly to the city. The very next day Abu Bakr, being informed by his daughter that neither Mohammed nor 'Ali would be present to lead the public morning prayers, takes upon himself to do so. Mohammed, hearing of this, with extreme difficulty made his way to the mosque, signed to Abu Bakr to retire from his place, and began afresh the prayers Abu Bakr had already commenced. At the very time that 'Ali was filling up Mohammed's grave, the news was brought that Abu Bakr had been formally constituted khalifah or successor to the "prophet."

In fact, whatever the reason was, the majority of the Muslmans were evidently determined not to have 'Ali as Mohammed's immediate successor. He was comparatively young, being only about thirty-three years of age at the time of Mohammed's death, and famous of his witty speeches. Perhaps it was felt that he had not the necessary force of character to cope with the serious situation created by Mohammed's death, when the whole future of Islam was at stake. Many of the converts to Islam had lost relatives slain in battle by 'Ali, and they may naturally be supposed to have cherished very friendly feelings towards him. The headship of Islam merely from a wordly point of view offered a splendid prize to the rude Arab. Quite apart from the other considerations just mentioned, this is quite enough to account for the fact that the most able and ambitious of the elder Moslems had no intention of forfeiting their chances of so enviable a position by allowing themselves to be at once and permanently set aside through acquiescence in the claims of 'Ali and his House. Indeed, Abu Bkar and 'Umar are stated to have made a league before Mohammed's death, the first article of which was to set aside 'Ali. At any rate the weight of the opposing faction was too strong for him, and not all the influence of the "prophet" himself, backed by several portents which were reported to have been seen after his death, indicating 'Ali as the rightful heir and the rival party as usurpers, were able to turn the scale in his favour.

The memory of the three first Khalifahs, Abu Bakr, 'Umar and 'Usman, is expected by the Shi'ahs on account of their having kept 'Ali out of what they regard as his right. This detestation finds expression in the tradition that during the expedition to Tabuk, twenty four men, among whom were Abu Bakr and 'Umar, Abu Sufyan and Mu'aviyah, conspired to the effect that 'Ayishah and Hafsah, the daughters respectively of Abu Bakr and 'Umar, poisoned Mohammed.

In spite of his martial valour and eloquence of speech, indications appear even in the 'Shi'ah traditions of the unpopularity of 'Ali, if not of actual contempt felt for him. Jealousy on account of his special intimacy and close relations with Mohammed is not an adequate explanation. When 'Ali accompanied 'Arfatah to the country of the jin below the earth, the hypocrites exulted in his supposed death and said, "Al-hamdu-lillah (Praise be to God!) God has delivered us from Abu Turab" (a nickname, signifying, 'father of dust.') When Mohammed started on the expedition to Tabuk, leaving 'Ali in command at Medina, the hypocrites were much scandalized, and taunted 'Ali with having been left behind lest he should bring misfortune on the expedition. 'Ali, therefore, took his arms and followed Mohammed to Juraf, where he was consoled by him and persuaded to return; but on the way back an attempt was made against his life.

'Ali was only ten years old when Mohammed assumed the prophetical office. Fourteen years after this 'Ali married Fatimah, one year after the Hijrah. She was the only child of Khadijah, who was born after Mohammed announced his mission, and was nine years old at the time of her marriage. Mohammed and Ali were inseparable companions. 'Ali said, "I always augmented my knowledge." "His light," said Mohammed, "was transmitted with mine through pure progenitors, he is partner in all the excellencies conferred on me.... The first I embrace Islam, with whose aid I fear not the opposition of all others." At a feast, when invited to eat before 'Ali, Mohammed says, "The Most high makes no such distinction between me and Ali. He created us one light, and our friends and enemies are the same, likewise our joys and sorrows, and 'Ali will eat when I do." Before the assumption of the prophetical office, when Mohammad was in the habit of retiring to Mount Harra, for prayer and meditation, it was 'Ali with Khadija who alone marked the significance of these things and the future Prophet's growth in divine love and knowledge and all that is praiseworthy and excellent. 'Ali was the first to be instructed by Mohammed in the ceremonial prayers and ablutions. When Mohammed invited his near relations to a feat in order to announce his mission to them, he proclaimed that the first believer should be his khalifah, brother, coadjutor and successor. All the others remaining silent, 'Ali rises and accepts the offer, but is told by Mohammed to resume his seat, as an older man may perhaps come forward. None, however, does so. The invitation is three times repeated, accepted by 'Ali, and ratified by the prophet, and the company disperse laughing. All through the Mecca period, when Mohmmed was looked upon as mad, foolish, bewitched and in league with Satan, 'Ali faithfully stood by him, and he was also cheered by the tenderness and consolations of his wife, Khadijah. Once Mohammed and 'Ali were pelted with stones by Abu Lahab and a mob in the streets of Mecca. When Mohammed was proclaiming his mission at the time of pilgrimage, and was driven away by a mob to mount Abu Qubais, it was 'Ali and Khadijah who went to seek him, found him and brought him home at night, and defended him in his house from the missiles of his enemies. When Abu Talib took Mohammed and the rest of the Bani Hashim and retired for safety to the defile called after him the defile

of Abu Talib, fearing that an attempt might be made on Mohammed's life, he caused him to sleep part of the night in one place and part in another, and made 'Ali sleep the first part of the night with Mohammed so that the blow of any intending assassin might fall on 'Ali. Similarly, 'Ali slept in Mohammed's place and cloak the night he fled from Mecca. Mohammed refused to enter Medina until 'Ali arrived: this was the beginning of Abu Bakr's jealousy of 'Ali. In 'Ali's expedition against Bani Zubaid, he appropriated to himself a girl who should have been reserved for the "prophet" himself. On complaint being afterwards made to Mohammed, he declared that whatever was his was likewise 'Ali's.

'Ali was entrusted with the performance of all the last offices for Mohammed after his death. He is to wash the corpse with six sacks of water brought from the well of Ghars, to wrap it in special robes with embalming perfumes: and to seat the body upright, when it will answer all his questions. Of the camphor brought from Paradise by Gabriel for Mohammed's obsequies, Mohammed reserves one-third for 'Ali. Mohammed gave him his armour, clothing, animals and also his ring, and appointed him his executor. During his last illness Mohammed is nursed by 'Ali with the greatest tenderness and devotion. He lies with his head in 'Ali's lap. When sitting, 'Ali supports him. Day and night, 'Ali scarcely ever leaves him. Mohammed calls for his friend and brother, and is only satisfied when 'Ali comes: he presses him to his bosom and communicates to him a thousand chapters of knowledge, each one opening into a thousand more. On the day of his death, Mohammed repeatedly said, "Call the beloved of my heart." He took him under his coverlet and imparted mysteries and secrets to him, "till at length, the bird of his sacred spirit sped its flight to its nest in the empyrean of mercy." Shortly before his death Mohammed gave various injunctions to 'Ali, and among other things bade him endure patiently the violence which awaited him in this world. When the "prophet" had breathed his last, 'Ali announced his death to those around. In washing and burying the body 'Ali was assisted by Gabriel, the angel, and the Holy Spirit (Ruhu-l-Quddus), who is declared by the Imam Mohammed Baqir to be an angel superior to Gabriel and Michael. Allah,The Most High caused 'Ali to hear their conversation, which was a charge by Mohammed, and an engagement by the angels, to protect and aid the "Commander of the Faithful" ('Ali). 'Ali performed the funeral prayers, and afterwards permitted the companions of the "Prophet" and all the people to enter the house in tens, and recite the following verse from the Koran, "Verily God and His angels bless the prophet. O, true believers, do ye also bless him and salute him, with a respectful salutation." (Sur, 35, ahzab, 56). After the body was laid in its last resting-place,' Ali enclosed the grave with brick, filled it up, and poured a quantity of red pebbles on it.

Concluding remarks – We cannot wonder at the hold such a hero has taken on the imagination of the Persians. But we are astonished at the dimensions and elaborate details of the structure which has been raised on such an insecure and untrustworthy

basis as that of biased tradition. This, however, presents no difficulty whatever to those whose stock of religious beliefs is supported and sustained from this dubious source. For the traditions, on which they rely, are by the Shi'ahs traced either to Mohammed or to one or other of their twelve sinless Imams. And every such tradition, handed down on what is considered respectable authority, carries with it the weight of an inspired revelation. With regard to themselves the Imams declared that whatever was asserted in their praise, provided only that divinity was not ascribed to them, fell short of the whole truth concerning their glory and dignity,-a licence of which the very fullest advantage has been taken. It is hardly too much to say, that the more incredible the assertion made on such unimpeachable authority, the more worthy of belief does it appear to the all too ready credence of willing listeners.

From the Christian standpoint there is much that an enlightened religious consciousness looks for, and looks for in vain in this ideal 'Ali; and the omissions are fatal. There is in him no true sense of the defilement of sin, or desire for growth in holiness and in likeness to God. The chief ground of acceptance with God is correct belief with reference to the Diet and His reputed messengers. This, it may be remarked by the way, presents a curious contrast with modern Western thought, where there is a marked tendency in the opposite direction, and a disposition to regard a man's life as the supreme test of his religion, and if the life be adorned with the beauty of goodness and virtue, to regard it as unnecessary and almost impertinent to inquire from what religious source, if any, this goodness and virtue spring. In the famous prayer of Kumail, which was taught him by 'Ali, there are indeed abject confessions of sin and reiterated supplications for mercy and pardon: but one of the believer's chief claims upon God's compassion and forgiveness is his confession of the Unity of the Godhood, - a thing which was all very well for the pagan and idolatrous Arabs who embraced Islam, but which sounds singularly antiquated and insufficient in this present age as a ground of appeal to the divine mercy. In place of the actually realized salvation and peace of the Christian, the pathetic prayer ascends, "Have mercy on one whose resource is hope, and whose weapon is weeping."

The Shi'ahs who adopted the cult of 'Ali and Husain and deliberately and persistently reject the Scriptural revelation of Jesus Christ, both as regards His divine and human personality and His work of atonement and mediation. These truths, intelligently undersood and embraced, can alone satisfy some of the strongest cravings of the human spirit. The heart yearns for a guide of such transcendant merit as to be worthy of all confidence, capable of satisfying the highest aspirations and able to bridge the gulf between seen and the unseen. With all its natural and inevitable limitations in certain directions not essential to its main purpose, this is what the Christian revelation really and truly does for countless numbers of humble, seeking souls. The nemesis of rejected truth, as in so many other cases, have overtaken the Shi'ahs. If the truth once for all

revealed is not apprehended, whether through ignorance, neglect or prejudice, the restless heart perforce seeks to satisfy its needs in some other way, and is liable to be ensnared and enslaved by every form of specious error.

THE SHIAH DOCTRINE OF THE IMAMATE

The expression, "the Shi'ahs," signifies companions or followers, and its reference in legal and theological terminology, ancient and modern, is to the partisans of 'Ali and his sons. They are agreed in the assertion that the Imamate is not an ordinary matter, to be left to be determined by an assembly of the people, but the Imamate is a pillar of the faith, in fact the very foundation of Islam. It is not regarded as permissible to think that the prophet could have been unmindful of it, or that he would have left it to the people to determine. It was necessary rather for him to appoint the Imam for the people, and that the Imam himself should be without sin, great or small, and that "Ali was indeed the one whom Mohammed designated. Their opinions they base on statements which they have received by the authority of traditions, and to these traditions they give meanings which are in accord with their doctrines. Men of these traditions are not recognized by those who follow the Sunnah, who know good money from bad, nor by the writers of Law. For the most part, there are statements that are ambiguous, or that are uncertain in their transmission, or that are essentially different in their meaning from the Shi'ite interpretations of them.

They are accustomed to divide this statement in to two classes, the Clear and the Concealed. An example of the Clear declaration is found in the words of the Prophet, "He to whom I am Master, 'Ali is also his Master." This they take to mean that the right of Master or Lord in Islam belongs to 'Ali. 'Omar therefore said to him (derisively), "So you have the mastery of all the Moslems, both men and women!."

Another saying of the Prophet, "The best judge between you is 'Ali," they mean to say that the Imamate has no other significance than this, namely, the right of judging according to the commands of God. The same idea is expressed again in these words, 'invested with authority," which they find revealed in the command, (Koran iv: 6z, Rodwell), "O ye who believe! Obey God and the Apostle and those among you invested with authority." This authority is the right to judge and to decide. And they say that in the deliberation of the Saqifah, in order that in the deliberation of the Saqifah, in order to determine the question of the Imamate, 'Ali was the only one who could bring about a

decision.[97] Observe also another of their texts, "Whoever pledges loyalty to me, even at the risk of his life, will be my representative, charged to exercise authority after me." And no one else took such a pledge of loyalty except 'Ali.

Here is an example of the class of statements where the sense is Concealed. They say that when the Prophet had received the Sura of Immunity (Koran ix) during the pilgrimage at Mecca, he first commanded Abu Bakr to explain it (to the Arab idolaters), when he received a further revelation to assign the duty of delivering this message to some one of his own family. It was in compliance with this command that he commissioned 'Ali to take this Sura and to recite it to them. This indicates, they say, that 'Ali had obtained the preferred right. They point out in addition to this that the Prophet is not known have placed anyone over 'Ali in command, whereas he did place 'Usama ibn Zaid over Abu Bakr and 'Omar on one expedition, and 'Amru ibn al-'Aas over them at another time. They consider that all of these things go to prove that 'Ali and no other was intended for the Caliphate. Some of their proof texts, however, are unknown (to orthodox Moslems) and others are far from being subject to the interpretations they put upon them. There are some of the Shi'ahs who consider that these texts point to 'Ali definitely and personally, and that they also indicate the right of his successors. Those who hold this opinion are called the Imamis, and they reject the two Shaikhs (Abu Bakr and 'Omar) because they did not acknowledge the supreme command of 'Ali, and did not give allegiance to him as these texts required. They have therefore scoffed at Abu Bakr and 'Omar in their office as caliphs. But we will not pay any attention to the way in which some of the more bigoted of their party have slandered these two Caliphs, for the Shi'ahs, as well as we, have already refuted these accusations. Another group among them say that these texts indicate that the appointment of 'Ali was required on account of his unique qualification and not on mere personal grounds. They claim that people fail in their purpose when they do not give the matter of qualification its rightful place. This group is known as the Zaidis. They do not reject the two Shaikhs and do not object to their caliphates (literally imamates), while they say that 'Ali was the qualified. They held that an imamate that was based on the preference of the people was valid, even though one better qualified might have been available.

The Shi'ahs are not agreed as to the succession of the Imamate (literally, caliphate) after 'Ali. There are those who maintain that the succession belonged to the children of Fatima, one after the other, by special designation (from 'Ali). We shall have more to say about this opinion later on. They are called Imamis because they taught as an article of faith the necessity of recognizing the Imam and his designation, which is the central principle in their beliefs. The other chief division of them accepted the succession of the children of Fatima, but subject to the choice of the Shi'ah community. They insist

[97] According to the orthodox account 'Ali was sick that day in the house of Fatima and did not assist in the discussion which took place in the Saqifah.

that the Imam be learned, abstemious, liberal and brave. He must be ready to take up arms and establish his claim to the Imamate. These are Zaidis, and they get their name from their leader, Zaid ibn 'Ali ibn al-Husain as –Sibt (the grandson). In a discussion with his brother Muhammad al-Baqir, Zaid held to the opinion that the Imam was obliged to justify his cause (if necessary) by the force of arms. Al-Baqir objected to this on the ground that on that principle their father, Zain Al-'Abidin, would not have been an Imam, for he never took up arms to assert his rights, and did not attempt to do so. He went on to accuse Zaid reproachfully of having accepted doctrines of the Mu'tazilites from Wasil ibn 'Ata. The Imamis had controversy with Zaid on the subject of the "Imamate" of the two Shaikhs, and as he declared that it was valid, and that he did not deny them the right to that office, they repudiated his authority and ceased to count him in the number of their imams. For this they were called the Rafizah, or the Repudiators, (Cf. Friedlander, Journal American Oriental Society, vol. xxix, p. 140 ff).

Others considered that the Imamate passed from 'Ali to one or the other of his sons, the two grandsons (of the Prophet). But they were not in entire agreement about this, for some considered that it belonged to Muhammad, the "son of the Hanafite woman," the half brother of Hasan and Hussain, and that it should the follow the line of his children. This party was called the Kaisanis, but we will omit the disagreements among these people for the sake of brevity.

One group among them is called the Ghulat, or those who go beyond the bounds of reason or of faith in claiming the divinity of the Imam, saying either, "he is a man who has acquired the qualities of divinity," or, "he is an individual in whom divnity has been established." This belief corresponds to the Christian claim for Jesus. But the fact is that 'Ali "burned with fire" whoever made this assertion about him. And Muhammad the son of the Hanafite woman was exceedingly angry with al-Mukhtar ibn Abu Ubaid for speaking to him in such a fashion, and cursed him and refused to have anything more to do with him. Ja'far as –Sadiq acted in the same way towards anyone who addressed him in that manner.

Some of them asserted that the Imam has a perfection that no one else can have, and that when he dies his spirit passes to the Imam succeeding him, who is then the possessor of this peculiar perfection. This is a doctrine of transmigration. Among the Ghulat there is one group who say that the Imamate ceased to be transmissible when it passed to the individual who was destined to be the last of the Imams. They are called the Waqifis, and some of them say that the last Imam is still alive; for he did not die, but is only concealed from the eyes of men. They undertake to prove this by reference to al-khidr (Koran xviii; 64). The same claim is made in regard to 'Ali, with the added details that he is in the clouds, and the sound of the thunder is his voice and the lightning is his whip. The very same sort of thing, also, they say about Muhammad ibn Hanafiyaah, and

that he is in Mount Razwa in the land of the Hejaz. The poet Kuthayyir (723 A..D). has written the following verses in this connection:

"Four complete are the Imams of the Quraysh, the lords of Right:

'Ali and his three good sons, each of them a shining light. One was faithful and devout; Kerbala hid one from sight; One, until with waving flags his horsemen he shall lead to fight Dwells in Mount Radwa, concealed; honey he drinks and water bright."[98]

The Ghulat of the Imamis, and particularly the "twelvers," hold this doctrine also, for they maintain that the twelfth of their Imams, Muhammad ibn al Hasan al-askari, whom they call al-Mahdi, (the rightly guided), when imprisoned with his mother, entered a sort of well or pit in the house his family occupied at Hilla. There he disappeared, but he is to come forth at the end of the age to fill the earth with justice. In proof of this they refer to a tradition which is found in the book of al-Tirmidhi in a regard to the Mahdi. Even up to the present time they are confidently expecting him, and they call him al-Muntazar, the one they were waiting for. every night after the evening prayer they stop at the gate in front of this well or pit. As they approach they call out his name and beseech him to return, until the starts come out. Then they disperse and come again the next night to repeat the same performance. This also they have kept up until the present time.

There are some of the Waqifis who say that the Imam who died will return to life in this world. They substantiate this claim by what they find in the Koran concerning the People of the Cave, (The Seven Sleepers, Koran xviii; 8); and concerning the "man who passed by a city," (Koran ii: 26I); and concerning the Israelite who was murdered, whose corpse was struck with the bone of a cow that they were commanded to sacrifice, (Koran ii; 68; Cf. Numbers xix and Deut, xxi: 1-9), "The cow was to be sacrified in order that a murderer might be discovered through the miracle to be wrought by a piece of her flesh," (Rodwell, op. cit,); and from other such references to extraordinary things that are like miracles, but which serve as proof only in their proper connection. As-Sayyid Himyari, (Nashwan ibn Sa'id al-Himyari, d. 1177 A.D.), wrote verses about them.

We have written enough about these Ghulat of the Imamis, for the teachers of the Shi'ah do not credit them, and have themselves pointed out the futility of proofs of this sort.

As for the Kaisanis, they considered that the Imamate passed from Muhammed ibn Hanafiyyah to his son Abu Hashim. Hence they were also called the Hashimis. At this point there was division, for some of them held that after the death of Abu Hashim, the Imamate should pass to his brother 'Ali, and afterwards to 'Ali's son, al-Hasan. Another group maintained that before Abu Hashim died, in the region of ash-Shirat, on

[98] Translation by Professor Nicholson, L.H.A., p. 216.

his return journey from Syria, he appointed Muhammad ibn 'Ali ibn Abdullah ibn 'Abbas, and that this Muhammad had designated his son Ibrahim, who was known as "the Imam"; and that Ibrahim had appointed his brother Abdullah ibn al-Harithiyya, who was called as –Saffah; and that he turn had appointed his brother Abdullah; Abu Ja'far, who was called al-Mansuri; and that so the Imamate passed in his line, by succession and by agreement, one after the other, to the last of them. This is the sect of the Hashimis who were supporters of the dynasty of the Beni 'Abbas.

Among them were Abu Muslim, Sulaiman ibn Kathir, Abu Samat al-Khallal, and others. To have a better proof of the rights of the Abbasid dynasty, there were some of this sect who declared that the Imamate had come from al-'Abbas (the uncle of Mohammed), for they said that he had survived the Prophet and that he was the main best fitted for that office.

The Zaidis followed and interpreted the Imamate according to teachings of their own. They held that to be determined by the choice of the legal authorities (literally "the leaders in the loosing and the binding") and not be designation. To the imamate of 'Ali they agreed, as also to that of his son-al-Hasan, and of al-Hasan's brother al-Husain, then of al-Husain's son, 'Ali Zain-Al-Abidin, and of his son Zaid ibn 'Ali. The latter was the leader of this sect.

He took up arms at Kufa, declaring his claim to the Imamate. He was killed, however, and crucified at the Kunasat (a place for refuse near Kufa). The Zaidis then claimed the imamate for his son Yahya, who went to Khorasan and was killed at al-Juzjan, after he had designated Muhammed ibn Abdullah ibn Hasan ibn al-Hasan the "grandson" (of the Prophet). He was called An-Nafs az-Zakkiya, "the Pure Soul." He took up arms in the Hejaz and assumed the title al-Mahdi. But the troops of al-Mansur came against him at once, and he was defeated and killed. Be he had given the authority to his brother Ibrahim, who succeeded in starting an uprising in al-Basra. Associated with him was a certain 'Isa ibn Zaid ibn 'Ali. Again al-Mansur, or his commanders, marched against them with the troops, and they defeated and killed both Ibrahim and 'Isa. 'Ja'far as Sadiq had forewarned them of the consequences of this uprising, and they count his forewarning them among his miracles.

There were some among them who said that the Imam who succeeded Muhammad ibn Abdullah, an-Nafs az-Zakiyya, was Muhammad ibn al-Kasim,who took up arms in Taliqan but they came against him, and he was led in captivity to al Mu-tasim, who put him in prison, where he died.

Others of the Zaidis said that the Imam after Yahya ibn Zaid was his brother 'Isa, the same man who was along with Ibrahim ibn Abdullah, when they were both killed by al-Mansur. They traced the imamate to him, and on his right the claims of the Zanj are

based, as we mentioned in account of them. And there were others who held that the imam after Muhammad ibn Abdullah was his brother Idris, who fled to the Maghrib and died there. His son, Idris ibn Idris, rose up in his place and founded the town of Fez. After him certain kings succeeded him in the Maghrib until they became extinct, as we mentioned in our description of them. After this the Zaidis were entirely disorganized.

But from among those who remained there was a missionary who gained authority in Tabaristan, i.e., al Hasan ibn Zaid ibn Muhammad ibn Ismail ibn al-Hasan ibn Zaid ibn al-Hasan, his "grandson," and his brother was Muhammad ibn Zaid. An Nasir al-Atrush (the deaf defender) also announced his claim to the imamate in Daylam, and the people became Moslems through him: his name was al-Hasan ibn 'Ali ibn al-Hasan ibn 'Ali ibn 'Omar. This 'Omar was the brother of Zaid ibn 'Ali, and his descendants held the government in Tabaristan. It was by their help that the Daylamites gained the authority and supremacy over the caliphs at Baghdad, as we showed in our account of them.

The Imamis traced the imamate from 'Ali, the wasi, to his son al-Hasan by designation, then to al-Hasan's brother al-Husain; then to his son 'Ali Zain al-Abidin; then to his son Muhammad Baqir; and then to his son Ja'far as-Sadiq. But from this point there are two lines of descent. One division traces the imamate to Ja'afar as-Sadiq's son, Musa al-Qazim. They are the Ithna 'Ashariyya, the "Twelvers," who stop with the twelfth imam, and adhere to the doctrine of his concealment until his return at the end of the age.

The Isma'ilis hold to the imamate of Isma'il, as the imam by the clear statement of his father Ja'far as –Sadiq. From their point of view his designation was adequate, for even if he did die before his father, nevertheless, the imamate remained in his line of descendants, as in the story of Aaron and Moses, (Koran xx; 31 and xxv; 37). They say that the imamate then passed from Isma'il to his son Muhammad al-Makhtum, and that he was the first of the imams to be concealed. For, according to them, as he did not have great strength, his missionaries held forth the hope of his return as an appeal to the people. When he gets the needed strength he will appear and make known his claim. They say that Muhammad al-Makhtum was succeeded by his son Muhammad al-Habib, who was the last of the concealed imams. For he was succeeded by his son'Ubaidullah al-Mahdi, whose missionary, Abu 'Abdullah, the Shi'ite, appeared among the Kitama, and the people responded to his invitation. The missionary then brought him out from his place of restraint in Sajilmasa and he ruled over Kairwan and the Maghrib. His sons after him ruled over Egypt, as is shown in the records about them.

The Isma'ilis got this name on account of their belief in the imamate of Ismail. They were also called Batinis on account of their adherence to the doctrine of the hidden or concealed imam. Again they were called the al Muhida ratahida because of some of

their sacrilegious teachings. While some of their doctrines were old, there were others that were new, which al-Hasan ibn Muhammad as-Saba preached in the end of the fifth century (after the Hijra). He gained certain strongholds in Syria and Iraq, and he did not lose his hold there until the general destruction distributed them between the Turkish rulers in Egypt and the Tatar rulers in Iraq.[99]

The Ithna 'Ashariyaa, who are often spoken of as the Imamis, are among the more modern representatives of that sect. They assert the imamate of Musa al-Kasim ibn Jafar, claiming that he succeeded to the imamate on the death of his older brother, Isma'il, who was imam while their father was still living. But before he died, Ja'far had also designated Musa for the imamate. Then his son 'Ali ar –Rida became the Imam. He was the one to whom al-Ma'mun bequeathed (the Caliphate), but who died before Ma'mun, so the bequest was not carried out. Then his son, Muhammad at –taqio, became the imam, and he was followed by his son 'Ali al-Hadi, and then came his son, al-Hasan al-Askari, and finally his son, Muhammad al-Mahdi al-Muntazar (the one they are waiting for) as we have described.

But in regard to each of these doctrines the Shi'ites have many differences of opinion besides the ones I have mentioned. Whoever wishes to study and examine them in detail has the "Books on Religions and Sects," Kutub al-Milal wa'l-Nihal, by Ibn Hazm, Shahrastani, and others. "He causeth whom He will to err, and whom He will guide," (Koran xvi; 95, Rodwell).

THE ITHNA 'ASHARI-SHI'I JURISTIC THEORY OF POLITICAL AND LEGAL AUTHORITY

In studying Ithna ashari Shi-I doctrines it is necessary to rid ourselves of the notions that an Ithna ashari Shi-I corpus of jurisprudence was to begin only after the Shi Buyids had established themselves in Baghdad (334-945) and, that unlike theology and law, the evolvement of a juristic theory of state (government) began even later, as a concomitant of the establishment of a stable and extensive Ithna ashari Shi'I government[100]. As a matter of fact IthnaashariShiism owes its characteristic features to the promulgation of its theological as well as its political doctrines before the advent of

[99] The doctrines taught by this as -Saba are mentioned in the book, al-Milal wa'l Nihal, "The Religions and Sects," by Shahrastani, (Cureton text, p. 150; Haarbrucker trans., p. 225).

[100] Cf. W. Montgomery Watt, Islamic Philosophy and Theology, 99, Edinburgh 1962; L. Binder, Iran, Political Development in a Changing Society, 73, Berkeley and Los Angeles 1962; C. Brockelmann, Geschichle der Arabischen Literatur (Supplement), I 320-3, 704-12, Leiden 1937; R. Storthmann , "Shia", Encyc, of Islam, Ed., I, IV, 354; D. M. Donaldson, The Shi'ite Religion, 284, London 1933.

any form of IthanashariShi'I political order, and these doctrines were sifted and codified under the impact of a relentless refusal to make legitimate any Muslim government established after the death of the Prophet, except that of the first Imam 'Ali b. Abi Talib.[101] Subsequent Ithna ashari shi'I regimes including those of the Buyids and the Safawids did not compel the IthnaashariShi'I jurists to modify those doctrines materially.

An adequate examination of the Ithna ashari Shi'i sources reveals that by 320-932 at the latest, abu Ja-far Muhammad Ibn Ya'qub Ibn Ishaq al-Kulini al-Din, the earliest of the Four Books of Ja'Fari fiqh, a compendium of approximately 16,200 Imami traditions arranged according to subject matter expressing the Ithna ashari Shi'I pronouncement on all matters one usually encounters within the purview of Muslim jurisprudence[102]. Unlike early authoritative Sunni compilations of Hadith such as the Sahih of Bukhari al-Kafi contains an exposition of the theory of the Imamate in a special section, the "Kitab al-Hujjah" (the "Book of the Proof"), significantly placed in the part dealing with the Usul and immediately following the "Kitab al-Tawhid" (The "Book of the Unity of God"). Furthermore, traditions establishing negative as well as positive precepts concerning legislation and political and judicial authority occur in the Furu' and in the remaining sections of the Usul. Owing to its great bulk, to repetitions, and to the absence of a detailed index, al-Kafi is difficult to handle. A painstaking reading is rewarding, however, as one is constantly astounded by the vehement polemic centered on the subject of the legitimate and just governance and the authoritative legislation directed against other Islamic schools of law outside as well as within Shi'ism and underlying the discussion of every aspect of jurisprudence. To Kulini, indeed, goes the credit of sifting and systematizing the Imami Hadith but considering his own biography and those of his immediate rawis, his code may be safely regarded as a product of the Ithna ashari –Shi'I circles of Qum and Baghdad in the second half of the third century A.H.[103] Later Ithna ashari Shi'I divines, no matter under what Ithna ashari Shi'I regime they lived and wrote, expressed basically the same views in respect to the doctrine of the Imamate as those exposed in al-Kafi. They qualified it with additional supporting proofs based on the Quran and Hadith; they adopted and developed dialectical proofs that may be regarded of great interest; nonetheless, the basic principles remained identical with those of Kulini. Among these divinces, highly esteemed by the Ithna ashari Shi'ah down to the present time and whose works are available to the researcher, may be mentioned

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[101] 'Imamate", 11-41/632-61, "Caliphate" (i.e., in government) 36-41/656-61. Ithna ashari Shi'I jurisprudence proclaims the succession of the imamate of 'Ali to the prophecy of Muhammad, "bila fasilah (with no interruption) and that whoever denies this, rejects something which is made compulsory by religion, "fardan min al-din". See. Mufid, Awa'il al-Maqalat fi al-Madhahib al-Madhahib al-Muktarat, ed., Charandabi, 33, 42, Tabriz, 1364/1944.
[102] New edition in 8 volts., Tehran 1374-77/1954-57.
[103] For a discussion of Itihna ashari Shi'I and Sunni biographical sources concerning Kulini, see the preface by Husayn 'Ali Mahfuz to the new edition of al-Kafi, I, 7-50. See also H. Laoust, les schisms dans l'Islam 149-150, paris 1965 and H. Corbin, Histoire de la philosophie Islamique,, 54-7, 350, Paris 1964.

Muhammad al-Hasan al-Tusio (d. 460/1067), and Ibn Babuyah al-Saduq (d. 381/991-2), authors of the remaining three of the Four Books, and al-Shaykh al-Mufid (d. 413/1022), all three of whom lived and wrote under the Buyids; al_Hasan b. Yusuf b. al-Mutahhar al-Hilli (d. 726/1326), who ministered to the Ilkhani ruler Muhammad Khudabandah, the convert to Ithna ashari Shi'ism; and Muhammad Baqir Majlisi (d. 111/1699-1700) of the Safawid period.

A complete presentation and an adequate analysis of the various principles of the Imamate as exposed by the Ithna ashari Shi'I jurists is, of course, far beyond the limit set for this paper. I shall confine myself to a brief discussion of the most essential doctrines that bear directly on the question of the authority of the Imam and on the question of its delegation, or rather of its nondelegation[104].

Like any other Islamic school of law, Ithna'ashari-Shi'I jurisprudence conceives of the Shari'ah, in content, to be the revealed will of God combined with the legal derivatives resulting from its interpretation, and, in function, to be the regulator of all affairs of the community and the individual. But, like Isma'ilism, and unlike the Zaydi and the four Sunni schools, it confines infallibility to the divine source of the Shari'ah whereas it extends the duration of that source so as to include the lifetimes of the Twelve Imams after the death of the Prophet. Twelver-Shi'sim rejects any belief that may proclaim Muhammad or any of the Twelve Imams as a partaker of God's attributes and actions or that may make them an incarnation of the Godhood, and it regards God as the One Lord, the Omnipotent and the Omniscient. On the other hand, it regulates the relationship between God and mankind in accordance with a prerequisite that deems the validity of the taklif to be bound by the moral law. Contrary to Ash'arism, it obliges God to give man right guidance, to reward him for obedience, and to punish him only for disobedience. It stipulates the imposition of the obligation of the fulfillment of the law, by God, upon those who are legally bound, the Mukallafin, on condition of their knowing His commands, His reward for obedience and His punishment for disobedience. Otherwise taklif is not valid [105]. Since the knowledge of God's will is not within man's

[104] Bedies al-Kafi, the following works, written by jurists, have been consulted: Sadiq, 'Ilal al-Shara'I, Najaf, 1382/1963'; Hilli, Minhaj al-Karamah, Lithog./ Tehran 1296/1878; Tusi, Kitab al-Ghaybah, Tabriz, 1323/1905; Mufid, op. cit.; and Kitab al-Irshad, Najaf 1382/1962; Majlisi, Bihar al-Anwar, Lithog, Persia, 1301-15/1883-97; Muzaffar, Dala'il al-Sidq, II, Najaf, 1372/1953, Ma'rof, 'aqidat al-Shi'ah al-Imamiyyah, 'ardun wadirasatun, Beirut 1376/1956; and Burujirdi, Ruslah-i-Tawdih al-Masa'il, Tehran, 1375/1955.

[105] Miller translated Hilli as follows: " taklif which is responsibility (ba'th) to him whom obedience is due t(wajib) in that in which is labour (mashaqqa) by way of beginning ('ala jihal'il'iblida) on condition of knowing". Al-Babu'l-Hadt 'ashar, par. 131. London, reprinted, 1958. Kulini quotes a tradition stating that "the Imam Ja'far al-Sadiq was asked: 'He who knows nought has he any obligation?' He said, 'No', (man lam ya'rif shay'an hal 'alayhi shay'un. Qala, 'la')" al-kafi (Usul), I, 164. Tehran, 1374/1954. Sadiq comments on "human actions" as follows: "Our belief concerning human actions is that they are created (Makluqah) in the sense that Allah possess foreknowledge (Khalq taqdir), and not in the sense that Allah compels mankind to act in a particular manner by creating a certain disposition (Khalq takwin). And the menaing of all this is that Allah has never ceased to be aware of the potentialities (maqadir) of human

power and since God is too exalted to reveal Himself to even man, it follows, argues the Ithnaashari Shi'I, that in order to impose taklif, God chooses in every generation the best among men, al-abdal, reveals His truth to them and designates them to guide mankind[106]. Being the best does not save them from committing sin or falling into error. Hence God, by his grace, fadl, confers infallibility, 'ismah, on those He designates. Those whom God chooses and designates are His proofs, hujaj, to the mukallafin. They are the messengers, rusul, the prophets, anbiya', and the Imams. The rusul are singled out as the prophets who brought new revealed laws, al-shara'i'[107]. There had been families of prophets, for example, the family of Abraham and the family of 'Imran (III:30). Prophecy was not inherited by all members of a prophet's family by virtue of their physical relationship, however but only by himn who, by virtue of God's choice, was the best among a prophet's family. There have been usurpers and evil-doers and these are accursed in this world and on the Day of Resurrection they will be shamefully rejected.[108] Knowledge acquired by the Prophets through revelation was inherited. Every prophet inherited all the knowledge of the prophets who were his predecessors. The prophet Muhammad, thus, possessed besides what was revealed to him the knowledge of all the prophets before him.[109] Like other Muslims the Ithna' ashari Shii jurists consider Muhammad to be the only prophet of Islam, the last of the prophets and superior to all other messengers and prop[hets. They also assert the absolute and all-inclusive authority of the Quran and the

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beings." Rislat al-I tiqadat al-Imamiyyah, Engl. Transl by Fyzee, A shi'ile Creed, 31-32. London 1942, Hilli says: "if the creature were not the bringer into existence (mujid) of his actions, then his taklif would be impossible, other wise, he would be responisible for what he is unable to perform". Al-Babu'l'Haadt 'Ashaar, par. 120. See also Mufid, op. cit.,. 21-22, 24-26, 28-29; Muzaffar, op.cit., I, 351, 353, and R. Brunschvig, Devoir et pouvoir, Histoire d'un problem de theologie muslumane, Sutida Islamica, XXI, esp. 42-44, 1964.

[106] On the controversies with mutazilites concerning the Ithna'ashari Shi'I doctrine that Reason needs revelation in order to know and to conclude, "al-aqlu yahtaju fi 'ilmihi was-nata'ijiji 'ila al-sam'I", see Mufid, op. cit., 11-12.

[107] Mufid states: "All the rusul are prophets but not each prophet (Nabi is a messenger (rasul), among the prophets ot God there were keepers of the laws (Shara'I') of the rusul and successors to them in their positions [as keepers of the law]", idem, 12. See also Kulini, al-Kafi (Usal, I, 176-177).

[108] "Our belief concerning them (al-zalimun [evil-doers, usurpers]) is that they are accused and dissociation from them is necessary. Allah the Mighty and Glorious says: "For evil-doers there will be no helpers' [2,273; 3,189;5,76]. And Allah says , Exalted is He: 'Who doeth greater wrong than he who invented a lie concerning Allah? Such will be brought before their Lord and witnesses will say: These are they who lied concerning their Lord. Behold! The curse of Allah is upon the wrong-doers, who debar (men) from the way of Allah, and would have it crooked, and who are disbelievers in the Hereafter' [11, 21-22]. Ibn 'Abbas in explaining this verse says: Verily, in this context, by 'the way of Allah' (sabil Allah) is meant 'Ali b. Abi Talib and the Imams, on whom be peace. Ana din the Book of Allah (are mentioned) two kinds of leaders: he who guides rightly and he who leads astray. And Allah the exalted says: 'And we made the chiefs(or leaders) who guide by Our command' (21, 73; cp, 32,24). And Allah says: 'And We made them pattersn (so for'a' immalan, lit, "leaders") that invite unto the Fire, and on the Day of Resurrection they will not be helped. And We made a curse to follow them in this world and on the Day of Resurrection they will be among the hateful' (28, 41-42)." Sadiq, op, cit., 105-106. See also Kulini, op. cit., I, 216.

[109] Kulini cites the Iman Ja'far al-Sadiq as follows: "God bestowed on Muhammad the sunan of the prophets. The Iman was asked 'what were those sunan?' He answered, 'the knowledge (Ilm) of all the prophets, all of it." Idem, 222-223.

Sunnah[110], but they do not accept the corollary that the Qur'an and the Sunnah should be God's proofs, hujaj to the mukallafin, after the death of the prophet. They are of the opinion that men went astray in interpreting the Qur'an and that the Sunnah was maliciously distorted by evil-doers. In this respect the Sixth Imam, Ja'far al-Sadiq, is quoted as follows: "I was considering the Qur'an, and I have seen the murji', and the qadari, and the zindiq who does not believe in it, [all of whom] have used it in their disputes in order to overcome men in argument. Then, I knew that the Qur'an cannot be a proof, hujjah, without a guardian, qayyim"[111]. And on the authority of the First Imam, 'Ali bin. Abi Talib, the following Tradition is quoted concerning the Sunnah: "In the hands of the people are truth and falsehood, the abrogating and the abrogated, the general and the special, the definite and the ambiguous, the well-remembered and the doubtful. Lies were quoted on the authority of the Prophet of God in his lifetime until [finally] he arose to address the people and said: 'O people! Lies have overwhelmed me. Now, he who tells a lie on my authority, on purpose, let him take his seat in hell'. Then, after his death, they [again] told lies on his authority"[112].

Because of this, and rejecting the alleged words of the Prophet which formed the foundation of Sunni political and legal theories, "My community will never agree upon error"[113] , the Ithna ashari Shi'I jurists came to the conclusion that it was incumbent upon God not to discontinue after Muhammad's death his mission to mankind, and that this was necessary for the mukallafin to maintain the attainment of real knowledge and the carrying out of actions leading to blessedness and reward, thawab; in other words, they claimed that prophecy should not cease in Islam after Muhammad. But faced categorically with the Quranic precept that Muhammad was the seal of the prophets (XXXIII: 40), they circumvented it by formulating the doctrine of the Imamate as

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[110] "There is absolutely nothing which is outside the Quran and the Sunnah (ma min shay'in illa wafihi kitabun 'aw sunnatun)", idem, 59 (on the authority of the Iman Ja'far al-Sadiq). See also idem, 62, tradition no.1, quoted on the authority of the Imam Musa al-Kazim.

[111] Idem, 169. This attitude of the Ithna ashari Shi'I jurists towards the Qur'an is observed also in the following tradition quoted by Kulini on the authority of the Imam Ja'far al-Sadiq, "Verily, the Quran is not a rational being (laysa binatiqin) who commands and forbids but there are those who are endowed with the knowledge of the Qur'an who command and forbid". Idem, 246.

[112] Idem, 62.

[113] On the authority of the Eighth Imam, Muhammad al-Rida, Kullini quotes the following: "...Who, then, is able to recognize the Imam or able to choose him? Never! Never! Minds went astray and hearts were perplexed.. They desired to set up the Imam by confused, lost, and imperfect minds and misleading opinions. Indeed they only went further from him. Satan made their deeds appear beautiful to them and led them astray from the right path and they were seeking their way. They turned away from God's choice and from the choice of the Prophet of God, may God bless him and his progeny, and [they turned away from] his family to their [own] choice while the Qur'an calls to them 'And it is not for a believer, man or woman, to have any choice in their affairs when God and His Apostle have decreed a matter; and whoever disobeyth God and His Apostle have erred with palpable error' (XXXIII: 36) and, 'Will they not then meditate on the Qur'an? Are locks upon their hearts' (XLVII:26)...Nay! It is God's grace. He bestows it on whomever He wills and God is the possessor of great grace. How could they be able to choose the Imam !". Idem, 200-202.

standing in place of prophecy, qa'imatun maqamaha, carrying on its function except in the matter of divine inspiration without a mediator, wahy. So the Ithna ashari Shi'I Imam is the successor of Muhammad, khalifatuhu wa qa'imun maqamahu, having his cumulative knowledge and all his attributes except divine inspiration without a mediator, wahy. He is chosen by God, infallible and sinless, perfect and the best man of his age, al-afdal. The identification of the status of the Imam with that of a prophet is confirmed by the Ithna-ashari Shi'I ruling that Reason, al-'aql, does not deny the Imam the office of prophecy. Mufid expresses the general opinion of the Ithna'ashari'Shi'I jurists when he states "it is divine law that forbae our Imams being given the name of prophecy, not reason, [for reason] does not forbid it, (wa'innama mana'a al-shar'u min tasmiyati 'a' immatina bi'lnubuwwati duna 'an yakuna al- 'aqlu mani 'an lidhalika)"[114] It must be firmly asserted in this context that although in Ithna'ashari Shi'I juristic phraseology the status of the Imams is subordinate to that of Muhammad, their status, in fact, is one of equality. Imami traditions bestowing on the Imams such status are abundant and it suffices here to mention that contrary to current opinion Ithna'ashari Shi'ism does not content that the Divine light passed from Muhammad to 'Ali and afterwards to the Imams[115] but that the drop of primordial light created by God before He created Adam was placed by God in Adam's loins and passing "from pure loins to wombs undefiled"

[114] Mufid, op. cit., 12, 39.

[115] Cf. Manzooruddin Ahmed, "The Classical Muslim State", in The Contemporary Middle East, Tradition and Innovation, ed., by Benjamin Rivilin and Jospeh S. Szyliowicz, 100, New York, 1965.
Sadiq cites Abu Dharr as follows; "I heard the Messenger of God saying: 'I and 'All were created from one light, we were ascribing glory to God on the right side of the Throne, two thousand years before God created Adam. And when God created Adam, He placed that light in his loins. When he settled in Paradise we were in his loins and when he meditated sin, we were in his loins. When Ibrahim was cast into the furnace ,we were in his loins. God transmitted us continually from pure loins to wombs undefiled until He placed us in 'Abd al Muttalib when He divied us into two parts,, placing me in the loins of 'Adbullah and placing 'all in the loins of Abu Talib". Sadiq, op. cit., I, 134-135. See also Kulini, op. cit., 441-442. Cf. Ibn Ahi al-Hadid, Sharh Nahj al-Balaghah, II, 450. Cairo, 1959 and Majlisi, op. cit., IX, 3-4. Referring to "Ghadir Khumn", Prof. Mahmood Shehabi of the Univeristy of Tehran, Faculty of Law, states the following: "There was no doubt as to what Muhammad intended for he gathered the people in the bright sun and gave them news of his impending death and then made Ali the main topic of his speech. He made Ali the new master of the people and in relation to God he raised Ali's status to the level of his own". Islam – The Straight Path, edited by Kenneth W. Morgan, 187, New York, 1958. Of outstanding interest are the following excerpts from a statement by Ayatullah Sayyid Hibatu'l-Din Shahristani in answer to the following g questions: "Are the Imams, may peace be upon them, more excellent than the prophets, may peace be upon them, or , is the opposite?". "... I have already expressed my opinion that the successor to the most excellent of the prophets may be considered higher in rank than some of the prophets. In other words, it has not been proved that the divine succession to the greatest of the prophets is less in rank than prophet... [This is] in addition to what was related[to the authority of the Prophet] concerning 'Ali, my peace be upon him, that he is the brother of the Prophet and the Prophet's self [see commentary on the Quranic verse of al-Mubahalah in the authoritative Ithna ashari-Shi'I tafsir, the Majma'al-Bayan fi Tafsir al-Quran by tabasi, II, 451-453. Tehran, 1371/1951] and that he is the most excellent of men after him, that his wife is the most excellent of women, that their descendents are the best descendents and that al-Hasan and al-Husain are the masters of the Youth of Paradise- and this includes any prophet who died young; and 'all the people of Paradise are young' and 'Ali is [part] of me and I am [part] of 'Ali' and 'Husaun is [part] of me and I am [part] of Husain.' And how do you know? HGad prophecy lasted and continued, then it would have continued in them...". Mufid, op, cit. 43, not. 1.

through successive generations finally separated into two in the loins of 'Abd al-Muttalib, one going to the father of Muhammad and the other to the father of 'Ali whence it manifested itself in the first Imam.

This concept of the status of the Imamate in relation to prophecy is the basis of the Ithna ashari Shi'I and theological notion that unites the authority of the Shari'ah and that of the Imam: the living Imam is the living entity of the infallible divine law, its interpret-maker and executor. Yet, until now, the Ithnaashari Shi'I doctrine of the Imamate has not served juristically to enhance or justify the position of the Ithna ashari Shi'I ruler despite the existence of an Ithna'ashari Shi'I sovereign state for more than four centuries in addition to the various earlier Ithna' ashari Shi'I regimes. On the contrary, it deems, in fact, as unbelief any declaration to the effect that the ruler is the Representative of the Shari'ah or the Shadow of God upon earth, and it divests him of any authority but temporal power the source of which may be the ruler's own person and/or that of other fellow-men, in either case human and not divine[116]. Unlike the other Islamic schools of law, Ithna 'ashari'Shi'ism has not endowed the existing power with the halo of divine validation and in sharp contrast to Isma'ilism the Ithna'ashari-Shi'I doctrine of the Imamate renders the staus of the Ithna ashari-Shi'I ruler antithetical to that of the Isma'ili Fatimi caliph[117]. Moreover the Ithna'ashkari-Shi'I concept of stipulated validity of the taklif based on a moral interpretation of the divine attribute of justice sets before the ruler an exemplary Lord to imitate, an omnipotent and omniscient though not arbitrary autocrat.

As much as it denies the possibility of delegation of the Imam's constitutional authority to the Ithna ashari-Shi'I ruler,Ithna'ashari Shi-'sim does not vest in the marji' al-taqlid (the religious juridicial authority to be obeyed by the muqallidin, those who are not acquainted with the precepts of the law, a term applied during the last few decades to the "grand" Mujtahid in Iran) the sovereign legal authority of the Imam, and it would be contrary to the very essence of Ithna ashari Shiism to regard the mujlahid as more than an ordinary application, and even more contrary to institute him as a performed of the

[116] By way of implication this idea is contained in the Persian Constitution of 1906-7, and in the present amended constitution. See Article 2 of the Supplementary Fundamental Laws of Oct. 7, 1907/Sha'ban 29, 1325, Engl, transl, by E.g. Browne, The Persian Revolution of 1905-9, 87-88, Cambridge 1910; see also Ann K.S. Lambton, article "Dustor" in EI, 2nd ed.

[117] In Isma'ili belief the Fatimi caliph himself was the Imam and at periods of salr (concealment) the concealed (master) Imam expressed his will through his apparent "trustee", while the Ithna ashari Shi'I belief the hidden Imam is absent (gha'ib) and not available through the intermediary of a human agency. For a study of the status of the Fatimi caliph, see P.J. Vatikiotis, the Fatimid theory of state, Lahore, 1957. See also al-Qadi alNu'man, Da'aim al-Ilsma was) Dhikr al-Halal wa'l-Haram wa-l-Qadaya wa-'l-ahkam 'al Bayti Rasuli 'Illah, ed. Fyzee, I, Cairo 1383/1963.

function of the Imam during the Great Occultation by virtue of "an ex ante appointment"[118]

The uniqueness of the Ithna ashari Shi'I doctrine of the Imamate can be explained by reference to the distinct Ithna ashari Shi'I concept of al-Ghaybahf. On the one hand the Tweltfth Imam is alive, and therefore the infallible origin of legislation and infallible guidance are deemed to be uninterrupted and everlasting. On the other hand, he is considered to have been absent, gha'ib, inaccessible to believers, and unreachable except by the will of God since ca. 329/940, the end of the Lesser Occultation. It is believer that this situation will remain until "after the advent of the al-Sufyani"[119], that is until resurrection. The Twelfth Imam's embodiment of the divine Shari'ah is therefore non-transmittable; his supreme authority as the infallible interpreter, be it individual or ex consensus while emphasizing the fallibility of Ijtihad and subjecting it to the principle of trial and error and setting utmost limits to the Ijma in definition and application[120].

In assessing the Ithna ashari Shi'I theory of legal and political authority we should realize that we are dealing with two variant situations; namely one in relation to the historical Imamate when the Imam was both alive and accessible to the believers, and the other during the Imam's absence. Concerning the first situation we are right to conclude that Ithna'ashari Shi'ism advocates politically an absolute theocratic government and legally perpetuates a notion of a living expression of the divine command. By way of implication, however, Ithna ashari Shi'ism holds that this is an ideal state, hypothetical and beyond the attainment by the believers. Concerning the second situation, lasting from ca, 329/940, probably earlier, until the end of time, Ithna ashari –Shiism conceives of no authority exercised by a human being as being divine and no legislation infallible. Applied to an Ithna'ashari Shi'I community living at this period, namely between 329/940 and the end of time, the Ithna ashari Shi'I doctrine of the Imamate secularizes its political institution, demands humanization of both the legislative body of such a community and the very process of legislation, sanctioning an interpretation of justice in terms of welfare, based on and derived from the welfare of the individual and not the interest of any institution, either religious or political.

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118 L. Binder, "The Proofs of Islam: Religion and Politics in Iran", in Arabic and Islamic Studies in Honor of Mailton A.R. Gibb ed., by George Makdisi, 122, leidin, 1965. Cf, the following Tradition quoted by Kulini on the authority of Imam Jar'far al-Sadiq: "Be wary of judging: sitting in judgement is confined to the Imam who is the one who knods the principles of judgement, who is the one who administers justice among the Muslims; [and it is confined] to a prophet or the wasi of the prophet (illaqu'l hukumata fa'inn'lhukumata innama hiyua lil 'imami al'alimi bi'l qada'l al'adili fi'l muslimina linabiyyin 'aw wasiyyi nabiyy)", al-Kafi (Furu) VII, 406. See also Ann K.S. Lambton, A Reconsideration of the Position of the Marja'al –Taqlid and the Religious Institution", in Studia Islamica, XX, 1964.

119 Tusi, op, cit., 257; Majlisi, op. cit., (New Edution, Tehran in progress) vol. LIII, 318. See also ibid, vol. LI, 360-361; vol LII, 151; vol. LII, 6 and Kulini, al Kafi (Rawdah), VIII 241.

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Ithna ashari Shi'ism and the Sunni legal theological schools unite in behaving in the divine origin of authority. In this they share common ground with the other monotheistic religions, Judaism Samaritanism and Christianity. However, Ithna ashari Shi'ism is unique in having adopted an attitude towards the administration of divine authority that ruled out any compromise leading to the identification of actual power with divine authority; consequently barring from the de facto ruler the legal means that may proclaim him as de jure in terms of divine law. This attitude evolved out of purely Arab-Muslim social and political circumstances in early Islam that may be termed in the words of a humorist as the trick which history played upon Islam in destining the Umayyads, of all Muslims, to were, so clearly, the mantle of the seal of the prophets; a historical "accident" the sequel of which was expediency in conceiving the lawful government on the part of the "orthodox" jurists from Abu Yusuf to ghazali and the dominance in "orthodox" theology of an arbitrary normal interpretation of God's relatiomship with mankind[121] In humanizing the process of legislation in the absence of the Twelfth Imam, Ithna ashari Shiism does not secularize the law sanctioning the community of the believers. It differentiates, however, among the sources of legislation in such a way that, in fact, only the text of the Quran is left as ultimately divine and therefore infallible. Ithna ashari Shi'I jurisprudence has rejected any claim that the transmitted text of the Quran in the form available to the people, namely, the 'Uthmanic Codex, is not its genuine divine recession[122]. On the other hand, it has not guaranteed to that extent the transmission of the text of the Sunnah, Prophetic as well as Imami. Accordingly the text of the available authoritative Imami Hadith may be judged as nearer to the truthful practices and sayings of Muhammad and the Imams than any other version but not as the ultimate truth which is not available. That also applies to the available authoritative interpretation of the Quran. In other words, the available transmission of the Quran is infallible (ma'sum)[123] while its interpretation, the transmission of the Sunnah of the Prophet and that of the Imams and their interpretation are all fallible and their infallible version will be available only on the reappearance of the Twelfth Imam at the end of tieme.

[121] See N.A. Faris, "Development in Arab Historiopgraphy as Reflected in the Struggle between 'al;I and Mu'awiyah" in Historians of the Middle East, ed., by B. Lewis and P.M. Holt, 435-441; E.L. Petersen, 'Ali and Mu'awiyah in early Arabic tradition, trans, by A .Christensen. Copenhagen, 1964; and G.E. von Grunebaum, Medieval Islam, A study of Cultural Orientation, 153-169; Chicago, 1946 and Islam, Essays in the Nature and Growth of a cultural Tradition, especially 1-30, London, 1961.

[122] Cf. Goldziher, Die Richtungen der Islamischen Koranauslegung, 270-277. Leiden, 1920; Noldeke Schwally, Geschichle des Qurans, 102-103; and W. St. Clair Tisdall, 'Shi'ah additions to the Koran", in The Moselm World vol. II (1913), 227-241. The present writer does not share the opinions ex—pressed bythe above cited authorities concerning the "Shi'ite Qurn" and maintains that except so far as differences that arose from different readings (qira'at) and so far as the order of the surahs and some of the odd verses are concerned, the Imami Shi'ahs join the Sunnis in the belief that the text of the 'Uthmanic Codex (the one between the two boards "ma bayna'l-daffalayan") is the genuine recession of the revealed Qur'an.

[123] See preceding note.-

Such a notion inevitably raises a question concerning the Muslim viewof history which is based on the dogma that the revelation to Muhammad was final and complete. This is no doubt that Ithna'a ashart Shi'ism tallies in form with this dogma; but it expects a further perfection of the interpretation of the divine will while implying that this perfection is an ideal beyond the reach of the believers. Combined with this notion, as we have seen, is a concept that asserts a humanized and therefore fallible process of legislation from aca. 329/940, probably earlier, until the end of time. Considering that these notions originated in the crucial formative period of Islam and that they have become the basis of an important Muslim school of Jurisprudence and theology, one is inclined to maintain that we need to revise our assessment of early Islam through a wider comparative study of the various doctrines of its different schools without giving too much credit to the dubious traditional labels "orthodox" and "sectarian".

Implementation of Islamic laws in pre Mughal and Mughal period

If one goes to primary sources of pre – Mughal and Mughal period like Ziya al-din Barni's Tarikh-i-Firuz Shahi, Fatawa-i-Jahandari, Afif's Tarikh-i-Firuz Shahi, Yahya ibn Ahmad Sihrindi's Tarikh-i-Mubark Shahi, Isami's Futuh al – Salatin, Ferishta's memoirs, Babur's Babur nama, Gulbadan Begum's Humayunama., Abul Fazal's Ain-i-Akbari, Akbar nama, Jahangir's Tajuk-i-Jahan giri, Kazim's Alamgir Nama, Letters of Aurangzeb etc, that will find that the rulers were not able to follow Islamic laws in absolute terms. They have followed their own rules of law: Barani called it Zawabit.[124] Mughal also followed their own rule of law. Ziya al di Barni has given full description of State laws, .He says following ;

Three exhaustive are devoted by Barani to the question – what is law, its importance and role in social and political affairs. Other renowned writers on Mirrors for Princes hardly show interest in such crucial issues and this ultimately supports the thesis that the Fatawa-i-Jahandari ranks not only as a major extent work on political ideas of the

[124] Barani, Zia-ud-din,Fatawa-i-Jahandari,(ed.,with introduction &notes by) Dr.Afsar Saleem khan,published by Research society of Pakistan,university of Punjab,Peshawar,September.1972,pp,132-133.

Delhi Sultanate but deserves a highly respectable place in the long chain of similar works produced outside the boundaries of the Indo-Pakistan sub-continent.

The Term zabita employed by Barani as a synonym for law is defined by him as 'the pursuance of a course of action which the ruling authority imposes upon itself as an obligatory duty with a view to realizing the ends of government and from which he does not deviate ever'[125]. Law is an indispensable requirement of a State and government. In its absence, social, political and economic unbalance captures the realm. Law aims at both immediate and ultimate good. It suppresses moral turpitude, social sins, political turmoil and economic chaos. Barani enumerates three kinds of laws – Law of the Sharia suiting all times and circumstances, customary law and man-made law. All the three kinds are essential for running the administration[126].In the Sharia governed ideal State, the Law of the Quran and Sunnah stands supreme. But the secular State of the noble ruler of Khita, i.e., Qadir Khan was essentially based upon the customary and man-made law and it functioned smoothly. The Sharia law is revealed law and it exhibits the reason of the Supreme Being, who is infallible. For its interpretation the ruling authority should seek the assistance of the learned ulema. For day to day governmental business, Barani feels the necessity of legislation by the power and urges the use of impartiality, honesty and wisdom in performing this duty. Law making is a very difficult task and the king must make it obligatory upon himself to seek the consultation of the intelligent and wise. Personal whim and fancy should be kept aloof from law and it should not be contradictory to Sharia, reason and public welfare. Like Plato and Farabi he strongly believes that law is the custodian of virtue and justice in human affairs. The State founded upon tyranny, fraud, service and individual caprice is tantamount to a tyrannical entity. In laws grounded upon virtue and reason Barani visualizes the stability and prosperity of government and administration. Both Sharia governed as well as virtuous secular states are administered by laws. Barani quotes the ideal law prevalent in the State of Sultan Mahmud of Ghazna and the rational rules of governmental administration enforced in the secular realm of Qadir Khan of Khita. Both kingdoms prospered on

[125] F.J. Nasihats, V, XII and IXV. For definition of Zabita, see f. 157b.
[126] Ibid, ff. 159-161b

account of the efficiency of sound laws[127]. Barani entertains enormous aversion for lawless and dictatorial States. To whom a monarchy was grounded on the principles of virtue, justice and noble descent is the final destiny of mankind. His ideal ruler is far from being a tyrant or a despot. He is the 'vicegerant of God Almighty' and is committed to the grave duty of the protection of religion and public welfare.

This concludes the summary of the major political doctrines of the Fatawa-i-Jahandari, a copious and valuable dicta on government and administration. The fundamentally realistic origin, form and colouring of the work have been projected at some considerable length. However, the theme of each Nasihat deserves more exhaustive treatment. Barani in his last few days of life felt the urgency of educating princes, governors and administrators in the science of 'government' and 'administration'. The very fact that the supremely valuable treatise had survived in a single manuscript copy, however, does not prove the unpopularity and rejection of the political ideas of the author. The curious form and the anonymous character of the work are the main factors accounting for its non-utilization and reference by the succeeding literati. It is indeed a mirror of past experience and key to sound administration. That political authority should be impartial, neutral and noble, which are the main doctrines developed in this book. Justice and benevolence are the obligations of ruling power. Politics and government are a means to an end and man has to account for his actions hereafter. If these basic principles of the Fatawa-i-Jahandari are incorporated in the modern constitutional systems of the developing States, surely they will be able to achieve political stability, economic viability and moral integrity.

[127] Ibid.

Chapter 2

Judiciary System in Islam

Judiciary system of Islam is very important for many reasons; it has given a new system to the world in general and to India in particular. It has also brought new institutions like Caliphate, the Sadarat, Qazi-ul-Quzat and so on. It has new concept for "crime" and "Punishment". It developed new institutions regarding crime and punishment. The holy Quran has good concept of Justice in every sphere of life particularly for common masses like women, poor and so on. It has very liberal rule and very democratic in nature but regrettably, it has been misunderstood and misrepresented[1] by several historians like Jadu Nath Sarkar, Philosopher, various Mullas and many others, which needs to be understood well.

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[1] Note: Misunderstood or misrepresented means that several scholars like Jadu Nath Sarkar has misunderstood the Muslim kings, Islam and judiciary system of Islam in general. They have painted them as very cruel, heartless and not good enough with common masses particularly with Hindus. Historian like P. Hardy from the School of Oriental and African Studies that "Apartheid was the dominant ideal in Medieval India, in default of Cultural victory" has criticized Medieval government in that manner. I.H.Qureshi has criticized the Mughal government in the following words:
"It was a crime to lull the Muslims into believing that the maintenance of the Empire was not their primary responsibility. Even more disastrous was the encouragement of the feeling that tolerance implied the belief that all religions were merely different paths, all equally good for reaching the same God. This was an even more potent cause of the demoralization and degeneration of the Muslims, especially their acceptance of subtle non-Islamic ideas. Indeed this was the darkest period in the history of Indian Islam". (A history of the freedom movement: Being the story of Muslim struggle for the freedom of Hind-Pakistan, 1707-1947, Karachi, 1957, vol.1, p.34.)
R.C.Majumdar also saw Medieval history in a communal angle. He says:
"The newly acquired ideal of a 'secular state' is opposed to all known facts of Indian history. But it is sought to be buttressed by a new conception of Indian history and culture, which recognizes no distinct Hindu or Muslim culture in Modern India, and looks upon these, along with European or Western culture, as so many streams muting together only to mingle and lose their separate entities in the sea of Indian culture. The Muslims, however, repudiate any such idea, and Islamic culture is not only recognized as a distinct entity, but has been formally adopted as the basis of the new state of Pakistan. In India, however, a small but gradually increasing class of influential persons now fight shy of the term 'Hindu' as a designation of a cultural unit, and only think in terms of Indian culture. Whatever may be value of such an idea in shaping Indian's culture, it becomes positively dangerous when it encroaches upon the domain of Indian history and seeks to ignore the existence of Hindu culture as one of the most potent and patent facts of Indian History even today". (C.H.Philips, (ed.), Historians of India, Pakistan and Ceylon, London, 1961, pp.426-7).
Peter Hardy also misinterpreted history in the following words:
"...neither educated Muslims nor educated Hindus accepted cultural co-existence as a natural prelude to cultural assimilation. Thus long before British rule and long before modern political notions of Muslim nationhood, the consensus of the Muslim community in India had rejected the eclecticism of Akbar and

However, this chapter deals with the concept of justice in Islam, origin of judiciary and main functionaries of Judicial administration in Islam.

Concept of Justice in Islam

The holy Quran has documented beautifully the concept of justice which is very important for understanding the administration of Justice. As we have seen footnote 1 that there are so many misunderstandings about Islam and Islamic traditions which can be removed by seeing the concept of Justice in Islam.

"Fulfill the commands of thy Lord with truth and justice"

- Quran[2]

"Life cannot be maintained without society, nor society without government, nor government without religion".

– Akhlaq-i-Jalali[3]

Wahed Husain observed that "According to Muslim jurists the protection of the weak and punishment of the evil-doer are not the sole functions of justice. Establishment of peace on earth, concord among humanity, advancement of society,

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Dara Shikoh for the purified Islamic teaching of Shaikh Ahmad of Sirhindi and Shah Waliullah. Cultural Aparthied was the dominant ideal in Medieval Muslim India, in default of cultural victory".
(Islam in India, Sources of India Tradition, Columbia University Press, See Introduction).
M.S.Golwalkar has said: "In Hindustan exists, and must exist the ancient Hindu nation, and nought else but the Hindu nation. All those not belonging to the national, i.e. Hindu race, religion, culture and language, naturally fall out of the pale of real national life" Golwalkar said about the non-Hindu that "have no place in national life, unless they abandon their differences, adopt the religion, culture and completely merge themselves in the national race. So long, however, as they maintain their racial religious and cultural differences, they cannot but be only foreigners".
Golwalkar again said against Muslims and others that: the foreign races in Hindustan must either adopt the Hindu culture and language, must learn to respect and hold in reverence the Hindu religion, must entertain no idea except the glorification of Hindu religion and culture, i.e. of the Hindu nation, and must lose their separate existence to merge in the Hindu race, or they may stay in the country wholly subordinated to the Hindu nation, claiming nothing, deserving no privileges, far less any preferential treatment – not even citizen's rights. There is – or, at least, should be – no other courses for them to adopt. We are an old nation, let us deal as old nations ought to and do deal with the foreign races who have chosen to live in our country".
Quoted from Sita Ram Yechury's article Has the BJP disowned this man? 16 June, 2008, Hindustan Times, p.12.
All above statements are not correct and they represent communal agenda and against the Islamic secular thoughts.

[2] Quranic quotation quoted by Wahed Husain in his book, Administration of Justice during the Muslim rule in India, Idarah-i-adabiyat-i-Delli, first edition, 1934, reprint 1977, Delhi, p.1

[3] Ibid., p.1.

and safeguards for social interest are the pillars of justice".[4] Quran focused greatly on justice as we have seen on the top two quotations which lay great stress on justice.

Another Quranic verse lays stress on justice;

"When you decide between people, give your decision with justice"

– Quran[5]

"And when give your decision, decide between them (i.e., the Jews) with justice: surely God loves them who do justice".[6]

"O true believers, observe justice when you appear as witnesses before God, and let not hatred towards any induce you to do wrong: put act justly; this will approach nearer unto deity, and fear God, for God is fully acquainted with what you do".

– Qurans: 8[7]

"O you who believe, be maintainers of justice when you bear witness for God's sake although it be against yourselves, or your parents, or your near relations; whether the party be rich or poor, for God is most competent to deal with them both, therefore do not follow your low desire in bearing testimony so that you may not swerve from justice, and if you swerve or turn aside then surely God is aware of what you do".

– Qurans 4: 135[8]

However, the above quotation shows that Quranic verses focused greatly on Justice. Justice is also a part and parcel of the divine injections. It is, therefore, a divine justice.

The Muslim canon law has also focused greatly on justice. It should not be based on race, creed, friends and foes. This is a great feature of the Muslim canon law. For instance, the second Caliph '(Umar) issued a farman to the governor of Kufa containing instructions for the administration of justice. One of the instructions is – "Treat all men justly and on equal footing when they appear before you in the court".[9]

[4] Ibid., p.1.
[5] Ibid., p.2.
[6] Ibid., p.2.
[7] Ibid., p.3.
[8] Ibid., p.3.
[9] Ibid., p.3.

Another farman says – "In dealing justice, regard all men as equal, and treat the near and remote on equal footing, keep yourself free from corruption.[10]

The Quran has set up an ideal of justice by referring to the Divine Balance – "Balance of justice". It says:

"And He appointed the balance that ye should not transgress in respect to the balance; wherefore observe a just weight and diminish not the balance (i.e., measure)" – (55: 7-9)[11]

* * *

"Certainly we sent our Apostles with clear arguments and sent down with them the book and the Balance (i.e., measure of justice) that men may conduct themselves with equity".[12]

- (57: 25)

Wahed Husain B.L. observed that "The Emperor Shah Jahan had a balance and a pair of scissors engraved in a "luminous" stone, and set it up on the arch of the door of Diwan-i-Am, the "Hall of Public Audience". This was the symbol of justice of the Mughal Emperors. It convened the idea that justice would be weighed in the balance, after pruning the extraneous matters from the claims of parties with scissors of equity. These symbols are still to be seen on the doorway of the Diwan-i-Am in Delhi".[13]

Wahed Husain has given the another instance about the justice of Mughal Emperor Jahangir. He says that "Jahangir adopted another device to bring justice within the easy reach of every person without the intervention of the court officials. He ordered to make a chain of gold thirty yards in length containing sixty bells. One end of the chain was fastened to "the battlements of the Shah Burj of the fort at Agra and the other to a stone-post fixed on the bank of the river "Jamuna". The emperor generally held the royal court to hear complaints. The aggrieved parties used to pull the chain. The sound of the bells apprised the Emperor that the Pullers of the chain wanted redress.

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[10] Ibid., p.3.
[11] Ibid., p.4.
[12] Ibid., p.4.
[13] Ibid., p.5.

They were ushered into the royal presence, and the Emperor used to personally hear their grievances and redress their wrongs".[14]

The above instances show the balance of justice in Mughal period.

About Islamic Justice and its character, Mohammed Marmaduke Pickthall says that "the laws of nature are expounded as the laws of Allah in the physical sphere, and in the moral and political spheres mankind is informed that there are similar laws of life and death, of good and evil, action and inaction, and their consequences – laws which no one can escape by wisdom or by cunning. His mercy, like His law, surrounds all things, and the standard of His Judgement is the same for all. He is not remote or indifferent, partial or capricious. Those who do good earn His favour, and those who do ill earn His Wrath, no matter what may be their creed or race; and no one, by the lip profession of a creed, is able to escape His law of consequences".[15]

The Quranic verses say or justify above statement;

"Then evil was the consequence to those who dealt in evil, because they denied the revelations of Allah and made a mock of them".[16]

* * *

"Allah produceth creation, then He reproduceth it, then unto Him Ye will be returend".[17]

* * *

"In that day their excuses will not profit those who did injustice, nor will they be allowed to make amends".[18]

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[14] Ibid., p.5-4.
[15] Pickthal, Mohammed Marmaduke, The Meaning of the Glorious Quran, Madhur Sandesh Sangam Publication, First Print 1994, Reprint 1995, New Delhi, pp.289-90.
[16] Ibid., p.291.
[17] Ibid., p.291.
[18] Ibid., p.294.

"Blessed is He who hath revealed unto His slave the criterion (of right and wrong), that he may be a Warner to the people".[19]

The above Quranic verses talk about the various forms of justice documented in Islamic concept of justice.

Quranic Verses talk about Women and Orphans and God gives justice to them. It says;

"O mankind! Be careful of your duty to your Lord who created you from a single soul and from it created its mate and from them twin hath spread abroad a multitude of men and women. Be careful of your duty toward Allah in whom ye claim (your rights) of one another, and towards the wombs (that bare you). Lo! Allah hath been a watcher over you".[20]

* * *

"Give unto Orphans their Wealth. Exchange not the good for the bad (in your management, thereof) nor absorb their wealth into your own wealth. Lo! That would be a great sin".[21]

* * *

"And if ye fear that ye will not deal fairly with the orphans, marry the women, who seem good to you, two or three or four; and if ye fear that ye cannot do justice (to so many) then only (one) or (the captives) that your right hands possess, thus it is more likely that ye will not do injustice".[22]

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[19] Ibid., p.259.
[20] Ibid., p.79.
[21] Ibid., p.79.
[22] Ibid., p.79.

"O ye who believe! It is not lawful for you forcibly to inherit the women (of your deceased kinsmen), nor (that) ye should put constraint upon them that ye may take away a part of that which ye have given to them, unless they be guilty of flagrant lewdness. But consort with them in kindness, for if ye hate them it may happen that ye hate a thing wherein Allah hath placed much good".[23]

* * *

"O ye who believe! Be ye staunch in justice, witnesses for Allah, even though it be against yourselves or (your) parents or (your) kindred, whether (the case be of) a rich man or a poor man, for Allah is nearer unto both (than ye are). So follow not passion lest ye lapse (from truth) and if ye lapse or fall away, then lo! Allah is ever informed of what ye do".[24]

The above Quranic verses show that the holy Quran is a great supporter of Women, Orphan for their justice.

Justice in Quran has been documented as moral and ethical value. Those who follow good moral and ethical behaviour, will follow justice certainly. See some Quranic verses in this regard;

"Follow those who ask of you no fee, and who are rightly guided".[25]

"It is not for the sun to overtake the moon, nor doth the night outstrip the day. They float each in an orbit".[26]

These two verses talk about moral and natural justice. Person should follow only the right path and follow one's natural duties. The strong man should not suppress the poor and the poor should not feel weak and work laborously. Quran is very clear in term of justice and concept as we have seen with two verses as Justice means moral and ethical values.

Another Quranic verse talks about the conspiracy, crime and wrong doing which is, of course, a part of justice;

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[23] Ibid., p.316.
[24] Ibid., p.316.
[25] Ibid., p.316.
[26] Ibid., p.316.

"O ye who believe! When ye conspire together, conspire not together for crime and wrong doing and disobedience toward the messenger, but conspire together for righteousness and piety, and keep your duty toward Allah, unto whom ye will be gathered".[27]

"Lo! Conspiracy is only of the devil, that he may vex those who believe; but he can harm them not at all unless by Allah's leave. In Allah let believers put their trust".[28]

The above Quranic verses talk about the righteous path and not to make or commit any crime towards right and not conspire any wrong doings. It is a natural justice. It is also, to me, a social justice. Our duties to follow only right path and not follow the wrong doings. It is very unfortunate that people do not follow Quran very well and interpret wrongly. It's very important to know Quran in right directions.

The Quranic verses talk about reward for good work and judgement which follows:

"Save those who believe and do good works, and theirs is a reward unfailing".[29]

"So who henceforth will give the lie to thee about the judgement?"[30]

"Is not Allah the most conclusive of all judges?"[31]

The above verses say that Allah is the only and the biggest judge on the Earth. Allah gives reward to them who perform the righteous duties and follow the right path. Allah gives judgment in the last day and Allah is the final judgement. Allah cannot be wrong, and follow the only right and good path.

Very beautiful injunctions about justice which is put forward by the Prophet Mohammad;

"Beware! You are all guardians, and you will all be asked about your subjects; then the Imam is the guardian of the subjects and he will be asked about respecting the subject, and a man is as a shepherd to his own family, and will be asked how he behaved, and his conduct to them; and a wife is a guardian to her husband's house and

[27] Ibid., p.391.
[28] Ibid., p.391.
[29] Ibid., p.444.
[30] Ibid., p.444.
[31] Ibid., p.444.

children, and will be interrogated about them; and a slave is a shepherd to his master's property, and will be asked about it whether he took good care of it or not".[32]

The above statement says the rights of women, slave, husband, and Imam are very useful for considering justice concept.

There is another Quranic verse about Jihad (holy war). During holy war, the Prophet strictly prohibited the soldiers not to attack women, infants, slaves, blind and so on which is very beautiful concept of justice;

"It is not incumbent upon infants to make war, as they are objects of compassion; neither is it incumbent upon slaves or women, as the rights of the masters, or the husband, have precedence; nor is it so upon the blind, the mohned, or the deorepid, as such are incapable".[33]

In Islam, abusive language is forbidden by the Muslim law which is very good concept of justice. Those who abuse must be punished according to the discretion of the Qazi. Abu Hanifa says;

"If a person abuses a Musalman by calling him an ass or a hog, punishment is not incurred, because these expressions are in no respect defamatory of the person to whom they are used, it being evident that he is neither an ass nor a hog. But some allege that in our times chastisement is inflicted, since, the modern acceptation, calling a man an ass or a hog is held to be abuse. Others, again, allege that it is esteemed only to be abuse when the person of whom it is said, occupies a dignified position". According to Abu Hanifah, the greatest number of stripes that can be inflicted for abusive language are thirty-nine".[34]

Muhammad has also said; "Abusing a Muslim is disobedience to God, and it is infidelity for anyone to join such one in religious warfare".[35]

The above statement and sentences clearly focus on morality which is law in Islamic world and it also focuses that abuses are anti Muslim or anti-Islamic. This is a natural or moral justice.

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[32] Dictionary of Islam, p.266.
[33] Dictionary of Islam, p.244.
[34] Ibid., p.8.
[35] Ibid., p.8.

Islam also gives another version of justice about peforming religious duties. About religious duties, according to the Muhammadan law, it is not lawful to accept any remuneration for the performance of religious duties. But these injunctions are now totally disregarded, and fees are taken for almost every religious duty performed by an Imam. The teaching of the Hidayah on the subject is as follows:

"It is not lawful to accept a recompense for summoning the people to prayers, or for the performance of a pilgrimage, or of the duties of an Imam, or for teaching the Quran, or the law; for it is a general rule, with our doctors, that no recompense can be received for the performance of any duty purely of a religious nature. According to Shafai, it is allowed to receive pay for the performance of any religious duty which is not required of the hireling in virtue of a divine ordinance, as this is only accepting a recompense for a certain service; and as the acts above described are not ordained upon the hireling, it is consequently lawful to receive a recompense for them. The arguments of our doctors upon this point are twofold. First, the prophet has said, "Read the Koran but do not receive any recompense for so doing" and he also directed Othman-bin-Abbas, that if he were appointed a Mowazzin (a cryer for prayer) he should not take any wages. Secondly, where an act of piety is performed, it springs solely from the performer (whence regard is had to his competence), and consequently he is not entitled to any recompense from another, as in the cases of fasting or prayer. A teacher of the Koran, moreover, is incapable of instructing another in it, but by means of qualities existing in his scholar, namely, capacity and docility, and therefore undertakes a thing the performance of which does not depend upon himself, which is consequently invalid. Some of our modern doctors, however, hold it lawful to receive wages for teaching Koran in the present age, because an indifference has taken place with respect to religion, whence if people were to withhold from paying a recompense for instructing in the sacred writings, they would in time be disregarded; and decrees pass accordingly.

"It is not lawful to receive wages for singing or lamentation, or for any other species of public exhibition, as this is taking a recompense for an act which is of criminal nature and acts of that nature do not entitle to recompense in virtue of a contract".[36]

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[36] Dictionary of Islam, p.586.

However, the whole Quran is based on the concept of justice directly or indirectly. Quran is also based on natural justice. It focuses each and every aspect of man's and women's problem and also discovers their solutions. The holy Quran talks about women's role, their dress, their marriage, liberty, laws and vice-versa about men's also. The Quran talks about punishment, sins (crime), moral character, Iman justice, rights, slaves, concubine and so on which all are based on concept of justice indirectly or directly some time. What is wrong and what is right has been dealt with very well.

It's very important to note that the Quran has to be read very carefully because so many schools have been interpreted or interpreted wrongly and understanding in a wrong direction. They try to see their own interest and problems come up. Therefore, it's a matter of great careful reading and implementing.

Sin (Crime) in the Islamic World

Although 'sin' looks moral character or moral teaching but in Islamic world it is also regarded as a crime which is punishable. About 'Sins' many authors and many other sources may give different number but according to dictionary of Islam the 'Sins' are following:[37]

1. Kufr, or infidelity.
2. constantly committing little sins.
3. Despairing of God's mercy.
4. Considering oneself safe from the wrath of God.
5. False witness.
6. Quzf, or falsely charging a Muslim with adultery.
7. Taking a false oath.
8. Magic
9. Drinking Wine
10. Appropriation of the property of Orphans.
11. Usury.
12. Adultery.

[37] Ibid., p.594.

13. Unnatural Crime.

14. Theft

15. Murder

16. Fleeing in battle before the face of an infidel enemy.

17. Disobedience to parents.

These "sins" may be divided more but these are important "sins" in the Islamic world which are also crimes.

There are some sayings of Prophet Muhammad as given in the "Traditions" on the subjects of "Sin".

"He is not a believer who commits adultery, or steals, or drinks liquor, or plunders, or embezzles, when entrusted with the plunder of the infidel. Beware! Beware!"[38]

"The greatest sin is to associate another with God, or to vex your father and mother, or to murder your own species, or to commit suicide, or to swear to lie".[39]

"The greatest of sins before God is that you call any other like unto the God who created you or that you murder your child from an idea that it will eat your victuals, or that you commit adultery with your neighbour's wife".[40]

"Abstain ye from seven ruinous destructive things, namely, (1) associating anything with God; (2) magic; (3) killing anyone without reason; (4) taking interest on money; (5) taking the property of the Orphan; (6) running away on the day of battle; and (7) taxing an innocent women with adultery".[41]

"Do not associate anything with God, although they kill or burn you. Do not affront your parents, although they should order you to leave your wives, your children and your property. Do not abandon the divine prayers for he who does so will not remain in the asylum of God. Never drink wine; for it is the root of all evils. Abstain from vice, for from it descends the anger of God. Refrain from running away in the battle, although ye be killed. When a pestilence shall visit mankind and you are in the

[38] Ibid., p.594.
[39] Ibid., p.594.
[40] Ibid., p.595.
[41] Ibid., p.595.

midst of it, remain there. Cherish your children and chastise them in order to teach them good behaviour ,and instruct them in the fear of God".[42]

It is related that a Jew once said to his friend, "Take me to this Prophet". He said, "Do not call him a prophet, for if he hears it he will be pleased". And they came to the Prophet and asked about the nine (SK) wonders (i.e. Ten Commandments), which appeared (from the hands of Moses). He said, "Do not associate anything with God, nor steal, nor commit adultery, nor murder, nor take an inoffensive person before the king to be killed, nor practice magic, nor take interest, nor accuse an innocent woman of adultery, nor turn your backs on the field of battle; and it is proper, particularly for the Jews, not to work on Saturday". The Jews kissed the hands and feet of the Prophet, and said, "We bear witness that you are a Prophet". He said, "what prevented you from being my disciples?" They replied; "David called on God to perpetuate the gift of prophecy in his family, and we fear the Jews will kill us if we become your followers".[43]

The above things are seen in the Islamic world as a crime.

Punishment in the Islamic World

Punishment is very important aspect in the Islamic world for maintaining law and order situation in the respective state or territory. Commonly speaking, denying the Quran teaching or Prophet words is seen a crime or sin in the Muslim world. Because it is a God-gifted holy book which cannot be wrong. Despite all these things still in the Islamic world "Punishment" is divided into three classes which are following:[44]

1. Hadd
2. Qisas
3. Tazib

Hadd

[42] Ibid., p.595.
[43] Ibid., p.595.
[44] Ibid., p.476.

Hadd or hudood (literary mean "that which is defined") is that punishment the limits of which have been defined in the Quran and Hadis. The following belong to this class:

i) Adultery (Zina), for which the adulterer must be stoned.

ii) Fornication, for which the guilty persons must receive one hundred stripes (Quran, Surah, xxiv, 2).

iii) The false accusation of a married person with adultery, for which the offender must receive eighty stripes (Quran, Surah, xxiv, 4).

iv) Apostacy, which is punishable with death.

v) Drinking wine, for which the offender must receive eighty lashes.

vi) Theft which is punished by cutting off the right hand. (Quran, Surah, v.42).

vii) Highway robbery: For robbery only, the loss of hands and feet, and for robbery with murder, death, either by the sword or crucifixion. (Quran, Surah, v.37).

Qisas[45]

Qisas means 'retaliation'. Qisas is that punishment which although fixed by law, can be remitted by the person offended against, or in the case of a murdered person, by his heirs. It is applicable to cases of murder and of wounding. For instance, the Quranic verses say like this "Eye for eye, tooth for tooth, burning for burning, wound for wound, stripe for stripe; but in allowing a money compensation, Muhammad departed from the Jewish Code.

(Quran, Surah ii, 173).

Tazib

Tazib is the punishment which is left to the discretion of the Qazi or Judge.[46]

Concept of Justice through Law

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[45] Ibid., p.477.
[46] Ibid., p.477.

Law is meant for Justice. Law is important for the natural justice. Therefore, Natural justice is embedded in the Holy Quran. In the Islamic world, the Law is a way of life. The meaning of "Shariah" and "Shara" is "the way". The compiler of the Ghiyasu-l-lughah defines it as "the way or road in the religion of Muhammad, which God has established for the guidance of His people, both for the worship of God and for the duties of life". The term ash-Shariah occurs once in the Quran, Surah xiv. 17. "We (God) put thee (Muhammad) in the right way concerning the affair". The term ash-Shariah is almost obsolete in books on Muslim theology, but it occurs once in the Quran, Surah v. 52: "To every one have we given a right way".[47]

According to the Islamic Scholars, The Muslim law may be divided into five part.

i) Itiqadat (beliefs)
ii) Adab (Moralities)
iii) Ibadat (Devotions)
iv) Muamalat (Transactions)
v) Uqubat (Punishment)[48]

Itiqadat (beliefs)[49]

Itiqadat contains six articles of the Muslim faith, namely; Belief in

i) God;
ii) His angels;
iii) His books;
iv) His prophets;
v) The day of Judgement;
vi) The Decrees of God;

This section of Muslim law is termed "Ilmul-Aqaid" or the "Science of the articles of Belief".

Adab[50]

[47] Ibid., p.285.
[48] Ibid., p.285.
[49] Ibid., p.285.

Adab consists of all those moral excellences which are enjoined in the Quran and traditions, which are following;

i) Ikhlas i.e. sincerity

ii) Tawakkul i.e. confidence in God

iii) Tawazu i.e. humility

iv) Tafwiz i.e. resignation

v) Qasru-e-Amal i.e, keeping down one's expectation

vi) Zuhd-fi-d-dunya i.e. renunciation of the world.

vii) Nasihah i.e., giving good council and advice

viii) Qanaah, i.e., contentment

ix) Sakhawah, i.e., liberality

x) Hubb i.e., love to God and man

xi) Sabr i.e., Patience

Ibadat[51]

Ibadat includes all acts of devotion to God, such are included in the five pillars of practice which are following;

i) Recital of the creed;

ii) Prayer

iii) Zakat or legal alms

iv) Saum or fasting

v) The pilgrimage to Makka

Muamalat[52]

It include such duties as it required between man and man and is divided into the following:

i) Mukhasamat (altercations)

ii) Munakahat (Nuptials)

iii) Amanat (Securities)

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[50] Ibid., p.285-6.
[51] Ibid., p.286.
[52] Ibid., p.286.

Under these three heads are embraced all the various sections of civil jurisprudence such as barter, sale, agency, larceny, marriage, divorce, dower, partnership, claims, etc.

Uqubat[53]

Uqubat denotes the punishment, embedded in the Quran and traditions, which are following:

1) Qisas i.e. retaliation
2) Haddu-e-Sariqah i.e. punishment for theft by the loss of a hand;
3) Haddu-z-zina, i.e., punishment for fornication and adultery is stoning for a married person and one hundred lashes for an unmarried person
4) Haddu-i-Qazf i.e. punishment of eight lashes for slander;
5) Haddu-r-riddah, or punishment by death for apostasy
6) Haddu-sh-shurb, or punishment with eighty lashes for wine drinking.

Islamic laws are also divided into two great distinctions of (1) Mashru (lawful) and Ghairu-i-Mashru (unlawful).

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[53] Ibid., p.286.

Mashru (Lawful)[54]

Mashru or lawful laws are divided into five divisions which are following;

i) Farz
ii) Wajib
iii) Sunnah
iv) Mustahabb
v) Mubah

i) Farz

Farz that which is proved beyond all doubts to have been enjoined either in the Quran or in a tradition of undoubted authority and the denial or disobedience of which is positive infidelity.

ii) Wajib

Wajib is an obligatory duty but of which there is some doubt whether or not it is enjoined in the Quran or in a tradition of undoubted authority.

iii) Sunnah

Sunnah is a word of prophet Muhammad which was practiced by him.

iv) Mustahabb

It was Muhammad and his companions who sometimes did and sometimes omitted it.

v) Mubah

This is desirable but which may be omitted without fear of sin.

Ghairu-i-Mashru (Unlawful)

In the Islamic world, Ghairu-i-Mashru was divided into three classes which are following;

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[54] Ibid, p. 286.

i) Mufsid, that which is the most vicious and corrupting, a mortal sin;

ii) Haram, that which is distinctly forbidden;

iii) Makruh, that which is generally held to be unclean.

The above distinctions of lawful and unlawful classes with their various subdivisions apply to all branches of Islamic law, whether it relates to ordinary duties of life, or of devotion to God.

In the contest of Islamic justice through law, we have seen that how laws are lawful and unlawful and many sub-divisions talk about the conceptual justice of Islamic world. The important thing is that these laws are very secular and very democratic in nature. As in general concept, scholars believe that Islamic laws are very tough, but it's not correct. It depends upon the crime, the Quantum of the crime, situations and so on. Different Ulema and states interpreted Muslim laws differently, therefore it appears wrong but Quranic Verses or Muslims are not wrong. It totally depends upon the nature of crime and interpretations.

Judicial administration in the Islamic world: Origin and their main functionaries

"At the commencement of Islam the prophet was the chief of the Muslims in temporal and spiritual concerns, being their ruler, judge, law-giver, priest and general."[55] In other words the prophet was the head of the Islamic Republic of Medina as well as the spiritual guide of the Muslim community. Prophet in his judicial capacity, acted as the supreme judge of the community, hearing complaints, deciding cases and determining the forms and limits of punishment."[56] But, latter on, during the death of the prophet, prophet appointed Abu Bakr to look after the whole business including judicial duties. From that time the institution of Khilafat (caliphate) was founded.

Caliph means successor; a lieutenant; a vicegerent, or deputy. In the Islamic world, it is the title given to the successor of Muhammad, who is vested with the absolute authority in all matters of state, both civil and religion as well as Judicial decisions.[57] Regarding this , the Quranic verses document the following words;

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[55] Zaydan and Margoliouth, Islamic civilization, part iv, p.248, Quoted from by A.D. Khan, in A history of the Sudarat in medieval India, Vol. I, Delhi, p. 1.

[56] Ibid, p, 1.

[57] Dictionary al Islam, p.263.

"O David! verily we have made thee a vicegerent (Khalifah); Judge then among men with truth"

(Quran, Surah xxxviii, 25).[58]

In the context of Origin of Judiciary in the Islamic world, the caliph was responsible,in charge of every duty, and the fountain of every order.

"The Caliph was in fact the Head of the State, Commander-in-chief of the army, and the chief Judge of the Empire. At first there were no separate judges; the caliph himself tried and decided cases. The Executive and the Judiciary were not separate at that time."[59]

Prophet Muhammad made several rules for the rulers and Imam or Caliph and their Qualification, which are recorded in the book, named "Mishkatu-i-Masabih" which are following.

"Whoever obeys me obeys God, and whoever disobeys me disobeys God. Whoever obeys the Amir obeys me. An Imam (caliph) is nothing but a shield to fight behind, by which calamities are avoided; and if he orders you to abstain from that which is unlawful, he will have great regard; but if he enjoins that which God has forbidden, he will bear the punishment of his own acts".[60]

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"If a negro slave is appointed to rule over you, you must listen to him and obey him, even though his head be like a dried grape".[61]

* * *

"It is indispensable for every Muslim to listen to and approve the orders of the Imam, whether he likes or dislikes, so long as he is not ordered to sin and act contrary to law. When he is ordered to sin, he must neither attend to it nor obey it".[62]

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[58] Ibid, p.263.
[59] A.D. Khan, A history of the Sadarat in Medieval India, Vol I, Idarahi-i-adabiyat-i-Dolli, Delhi, 1998, p,3.
[60] Dictionary of Islam, p.548.
[61] Ibid, p,548.

"The best Imams or Caliphs are those you love, and those who love you, and those who pray for compassion on you, and you on them; and the worst of Imams are those you hate, and those who hate you; and those whom you curse, and who curse you".[63]

* * *

"Prophets were the governors of the children of Israel, and when one died, another occupied his place; and verily there is no prophet after me, and the time is when there will be after me a great many Khalifahs." The companions said, "Then what your order to us" "The prophet said, obey the Khalifah, and give him his due; for verily God will ask about the duty of the subject".[64]

However, the above statement was given by prophet about the qualification of Imam or caliph.

However, Mawardi, a great Islamic Scholar mentioned the following requirements of a man to be eligible as Caliph or Imam:

1. He must be morally beyond evil;
2. He must be possessed of such knowledge that will enable him to pass judgment personally on positions of the government that will present themselves to him;
3. His hearing and sight must be unimpaired;
4. He must enjoy soundness of limbs;
5. He must show the courage and energy required to protect the Dar-ul-Islam; and to fight the enemy;
6. He must possess the judgment and the experience necessary for the conduct of affairs; and
7. He must be descendant of the Quraish, the clan of the prophet.[65]

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[62] Ibid, p,548.
[63] Ibid, p. 548-49.
[64] Ibid, p. 549.
[65] Mawardi, Quoted by A.D. Khan in, A history of the Sadarat in Medieval India, p, 5-6.

However, we can see that Khalipha possesses unlimited powers and he was the absolute authority but he can be dismissed if he is wrong as prophet Muhammad says in his statement.

Sadarat

Sadr who holds the office of Sadarat. Sadr is the Naib (deputy) of the Khalipha who discharges duties for the khalipha. Sadr has so many functions and enjoys unlimited powers. Al-Mawardi has given a list of duties of Sadr which are following;

1. Action against injustice and tyranny committed against people by those in authority over them;
2. Checking injustice in the assessment or levying taxes;
3. Supervision of the acts of the public official in the various Government departments;
4. Complaints by those in receipt of official stipends that these have been reduced in amount or have not been paid;
5. Claims for restoration of property wrongfully seized.
6. Surveillance of auqaf (pious foundations);
7. Non-enforcement of decisions made by the Qazis not strong enough to see their judgments carried out against defendants occupying high ranks and powerful positions;
8. The suppression of open evil-doing and the enforcement of regulations within the jurisdictions of the Muhtasib (censor) but beyond his jurisdictions;
9. The care of public worship and religious practices in general; and
10. Hearing of litigation in general (presumably including the hearing of appeals against the decisions of the Qazi).

However, Sadr was vested unlimited powers as the above list shows.

Qazi

During Umar (Khalipha) time, an important development took place which was the separation of the judiciary from the executive. He appointed Qazis to administer

justice and made the office of the Qazi distinct from and independent of the executive.[66]

The Qazi can be appointed either by the Khalipha or the sovereign directly or by the Wazir, or by the provincial Governor vested with the necessary power of doing so. His appointment should be made on written letter or verbally. Qazi can be dismissed or deposed by the sovereign but his dismissal should be in public place so that the ruler may repair to him for decision, and may refrain from doing so when he is no longer in the office.

The Qazi may appoint a Naib or deputy Qazi only if he is empowered to do so; he can also dismiss him.[67]

Those who wanted to be Qazi, needed ten requirements which are following.

1. A Judge should be God-fearing and at the same time should have a dignified demeanour;
2. He should have sound common sense and be conversant with the best of judicial demeanour;
3. He should bear an absolutely irreproachable Character;
4. He should not deliver judgments before he is satisfied that full proof has been laid before him, nor tarry in his judgment when sufficient proof has been produced;
5. He should not accept any presents nor hear any recommendations;
6. He should never see any party in private;
7. He should be fearless in awarding what is right and due;
8. He should rarely smile and speak little;
9. He should never ask any party to do him any favour; and
10. He should take great care to protect the property of the orphans.[68]

Duties of Qazi

Qazi had many duties which had to be followed are following;

[66] Ibid, p,6.
[67] Wahed Husain, B.L. Administration of Justice during the Muslim rule in India, Idarah-i-adabiyat-i-Delli, Delhi, 1934 (First reprint) 1977, p.160.
[68] A.D. Khan, A history of the Sadarat in Medieval India, p,22-23.

1. "A Qazi in deciding a case must follow and cannot act contrary to the law laid down by a clear text of Quran, or of a universally accepted or well-known tradition, or of a consensus of opinion (Ijma)."

"Any decision of his opposed to such certain and absolute law must be set aside by himself or by the succeeding Qazi when the error is discovered. But, otherwise, his decision cannot be set aside by another judge or by himself, although the view of law on which it is based is erroneous".[69]

In the context of duties of Qazi, Ibn Khaldun states that the Qazi was in the authority who decides disputes and to whom persons aggrieved carry their plea for justice. So his primary duty was to solve the disputes and second duty of Qazi was to take care of those persons, grown up or young, who were incapable of protecting their rights by reason of being disabled, infirm, insane, insolvent ,orphans, and the like so that the enforcement of rights and obligations in their favour could be insured. The third duty of the Qazi was the administration and supervision of awqaf, the pious foundations. The next duty of Qazi was to give effect to testamentary dispositions. The Qazi was also responsible for the protection of the district against the violations of safety and building regulations. Other duties like, solemnization of marriage, divorce and the like also come within the function of the Qazi.[70]

Qazi-ul-Quzat

The Qazi-ul-Quzat, i.e., the Qazi of Qazis, the Chief Qazi, was the Chief Judicial Officer, and his court was the highest court of justice in the Caliphate. It was generally situated at the capital.

The court of the Qazi-ul-Quzat was the Chief appellate court in addition to the court of the Caliph who also used to hear appeals.

[69] Wahed Husain, Administration of Justice during the Muslim rule in India, p.164.
[70] A.D.Khan, A History of the Sadarat in Medieval India, p.23-24

Harun-ur-Rashid, first established the court in the Caliphate. Imam Abu Yusuf, one of the Chief disciples of Abu Hanifa, was appointed the Chief Qazi of Baghdad. Since then the office has been retained in all Islamic countries.[71]

Maqrezi, an Islamic historian, has given vivid description of Qazi-ul-Quzat court. He says that Qazi-ul-Quzat was having the highest post in the judiciary system and his rank and position were very superior to all "The People of Learnings". He looks after all the judicial and religious matters. He holds his court generally on Saturdays and Wednesdays. The Chief Qazi also inspects the records of mint. He himself closes the mint and puts his seal upon it.[72]

Mufti

An important functionary in the judiciary system was the Mufti. The term "Mufti" means a person who was competent to give fatwa or legal opinion. He did not represent any party to litigation, nor did he expound the law from the point of view of his client.[73] Mufti was the expounder of the Muslim law. He was the legal advisor to the Qazi. A.D. Khan says that the Mufti was expected to have a through "knowledge of the rules of God which concern the actions of men, who could themselves bind to obey the law respecting what was required, forbidden, recommended, disapproved or merely permitted.[74] The Mufti did not hold a court of his own but he was attached to the court of the Qazi for giving legal opinions. His functions were consultative.

Muhtasib

The last important officer of the Judiciary System was Muhtasib and his office was adjunct with the Sadarat office. This institution (Al-Hisbah) can hardly be called a court of justice as the office of the Muhtasib was not ordinarily vested with judicial powers. **Amil Ali writes: "The Municipal Police was under a special office called the Muhtasib.** This useful and important office was created by the Caliph Mehdi and has existed ever since in Islamic countries. The Muhtasib was both superintendent of

[71] Wahed Husain, Administration of Justice during the Muslim rule in India, p.169-70.
[72] Ibid., p.170
[73] Ibid., p.166-7.
[74] A.D.Khan, p.24-25.

the markets and a public censor. He went through the city daily, accompanied by a detachment of subordinates and assured himself of the due execution of the police orders, inspected the provisions, tested the weights and measures used by trades people, and suppressed nuisances. Any attempt to cheat led to immediate punishment".[75]

S.Khuda Bukhsh observes, "we must note, however, that the Muhtasib only interposed upon application of the party and was not competent to adopt coercive measures as he had no judicial power. It was no part of the duty of this officer to decide judicial matters unless the accused confessed his guilt and was in a position to carry out his obligation or to repair the injury caused by him".[76]

In the Islamic world, the administration of judicial system was well established. In the administration, there was no discrimination based on class-caste. Although administration was run by only the elite but slave can also be a Khalipha as prophet Muhammad has said. There was no absolute power vested in the hand of Qazi-ul-Quzat, Qazi, Sadr or any other official. They all were the subject of Questions by the upper official system. Even Imam or Khalipha was also not in an absolute position. Prophet clearly said that if Imam follows the law, then subjects follow, otherwise, subjects should not obey the Imam. To me, the judicial administration was based on hierarchy and grade. All the officers had their own responsibilities and they had to stay within the limitations. Although they had absolute power center within their territory and did whatever they could do, but their power had also boundary and limitation. However, the Islamic judiciary was well established and had very secular and non-partisan justice system.

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[75] Ibid., p.174.
[76] Ibid., p.174.

Bibliography:

1. Note: Misunderstood or misrepresented means that several scholars like Jadu Nath Sarkar has misunderstood the Muslim kings, Islam and judiciary system of Islam in general. They have painted them as very cruel, heartless and not good enough with common masses particularly with Hindus. Historian like P. Hardy from the School of Oriental and African Studies that "apartheid was the dominant ideal in Medieval India, in default of Cultural victory" has criticized Medieval government in that manner. I.H.Qureshi has criticized the Mughal government in the following words:
"It was a crime to lull the Muslims into believing that the maintenance of the Empire was not their primary responsibility. Even more disastrous was the encouragement of the feeling that tolerance implied the belief that all religions were merely different paths, all equally good for reaching the same God. This was an even more potent cause of the demoralization and degeneration of the Muslims, especially their acceptance of subtle non-Islamic ideas. Indeed this was the darkest period in the history of Indian Islam". (A history of the freedom movement: Being the story of Muslim struggle for the freedom of Hind-Pakistan, 1707-1947, Karachi, 1957, vol.1, p.34.)
R.C.Majumdar also saw Medieval history in a communal angel. He says:
"The newly acquired ideal of a 'secular state' is opposed to all known facts of Indian history. But it is sought to be buttressed by a new conception of Indian history and culture, which recognizes no distinct Hindu or Muslim culture in Modern India, and looks upon these, along with European or Western culture, as so many streams muting together only to mingle and lose their separate entities in the sea of Indian culture. The Muslims, however, repudiate any such idea, and Islamic culture is not only recognized as a distinct entity, but has been formally adopted as the basis of the new state of Pakistan. In India, however, a small but gradually increasing class of influential persons now fight shy of the term 'Hindu' as a designation of a cultural unit, and only think in terms of Indian culture. Whatever may be value of such an idea in shaping Indian's culture, it becomes positively dangerous when it encroaches upon the domain of Indian history and seeks to ignore the existence of Hindu culture as one of the most potent and patent facts of Indian History even today". (C.H.Philips, (ed.), Historians of India, Pakistan and Ceylon, London, 1961, pp.426-7).
Peter Hardy also misinterpreted history in the following words:
"...neither educated Muslims nor educated Hindus accepted cultural co-existence as a natural prelude to cultural assimilation. Thus long before British rule and long before modern political notions of Muslim nationhood, the consensus of the Muslim community in India had rejected the eclecticism of Akbar and Dara Shikoh for the purified Islamic teaching of Shaikh Ahmad of Sirhindi and Shah Waliullah. Cultural Aparthied was the dominant ideal in Medieval Muslim India, in default of cultural victory".
(Islam in India, Sources of India Tradition, Columbia University Press, See Introduction).
M.S.Golwalkar has said: "In Hindustan exists, and must exist the ancient Hindu nation, and sought else but the Hindu nation. All those not belonging to the national, i.e. Hindu race, religion, culture and language, naturally fall out of the pale of real national life" Golwalkar said about the non-Hindu that "have no place in national life, unless they abandon their differences, adopt the religion, culture and completely merge themselves in the national race. So long, however, as they maintain their racial religious and cultural differences, they cannot but be only foreigners".
Golwalkar again said against Muslims and others that: the foreign races in Hindustan must either adopt the Hindu culture and language, must learn to respect and hold in reverence the Hindu religion, must entertain no idea except the glorification of Hindu religion and culture, i.e. of the Hindu nation, and must lose their separate existence to merge in the Hindu race, or they may stay in the country wholly subordinated to the Hindu nation, claiming nothing, deserving no privileges, far less any preferential treatment – not even citizen's rights. There is – or, at least,

should be – no other courses for them to adopt. We are an old nation, let us deal as old nations ought to and do deal with the foreign races who have chosen to live in our country".
Quoted from Sita Ram Yechury's article," Has the BJP disowned this man"?. 16 June, 2008, Hindustan Times, p.12.
All above statements are not correct and they represent communal agenda and against the Islamic secular thoughts.

2. Quranic quotation quoted by Wahed Husain in his book, Administration of Justice during the Muslim rule in India, Idarah-i-adabiyat-i-Delli, first edition, 1934, reprint 1977, Delhi, p.1
3. Pickthal, Mohammed Marmaduke, The Meaning of the Glorious Quran, Madhur Sandesh Sangam Publication, First Print 1994, Reprint 1995, New Delhi, pp.289-90.
4. Dictionary of Islam, p.266.
5. Dictionary of Islam, p.244.
6. Dictionary of Islam, p.586.
7. A.D. Khan, A history of the Sadarat in Medieval India, Vol I, Idarahi-i-adabiyat-i-Delhi, Delhi, 1998, p,3.
8. Dictionary of Islam, p.548.
9. Mawardi, Quoted by A.D. Khan in, A history of the Sadarat in Medieval India, p, 5-6.
10. Wahed Husain, B.L. Administration of Justice during the Muslim rule in India, Idarah-i-adabiyat-i-Delhi, Delhi, 1934 (First reprint) 1977, p.160.
11. A.D. Khan, A history of the Sadarat in Medieval India, p,22-23.
12. Wahed Husain, Administration of Justice during the Muslim rule in India, p.164.
13. A.D.Khan, A History of the Sadarat in Medieval India, p.23-24
14. Wahed Husain, Administration of Justice during the Muslim rule in India, p.169-70.

Chapter-3rd

Judicial system in Pre-Mughal Period

During the Pre-Mughal period, that is the Delhi-Sultanate and the Sher-Shah Period, which was very important to understand the justice system in the period for various reasons-----. First, the rulers were Muslims and subjects were mostly Hindus or non-Muslims, Second, the most of the rulers belonged to the Sunni Sect of Islam. So, what was the treatment of the rulers to the non-Muslims or to the other sect of Muslims?. Third, what was the Pattern of Muslim laws in the Period or was it Possible to apply the Muslim law in that period in the form of Islamic Laws or were there some limitations? What was the administration of justice in Pre-Mughal Period? Or,were the pre-Mughal rulers able to implement or retain the same officials who were in the Islamic world? Did the state follow strictly the Islamic law or did they have their own laws? Who were the heads of justice system in Pre-Mughal period? As we know that in the Islamic world, the Khalipha was the head of the state, was it correct in terms of Pre-Mughal period? There are the questions which this chapter will deal with ?

Concept of Justice in Pre-Mughal Period

Ziauddin Barani points out that "Justice is Scales where individual wrongdoings or good doings were weighted. Justicle differentiates between wrong and right. Justice exposes some body's cruelty, terrorism, stealing and snatching. Therefore, without justice, man's life cannot be stable. Any religion which is established by God, cannot be alive without justice. Ancient and Modern philosopher has told that "Religion and justice were twin children" because justice gives punishment to cruel, thieves, revolters and protects weaker sections, obtainers, helpless, child, women and property of friends.

Justice is a base of social organisation and civil rights. And this can be implemented through a strong ruler ... If there is no justice, none of the Persons will help or protect each other.[1]

He also says in following words about justice;[2]

[1] Ziauddin Barni, Fatwa-i-Jahandari, translated by Dr. Afsar Beghum, in Political theory of Delhi Sultanate, by Mohammad Habib, Hindi translation by Shula Misra, Gramth Shilpi Prakashan, 2000, p. 40,54.

Barani declares justice as the chief pillar on which the super structure of an ideal should be raised. In his ideal ruler this quality should be embedded in his person through and through. Religion and justice are twins. Justice forms the cornerstone of rulership. An hour of justice is considered by him better than seventy years of religious devotion. The king must possess an inherent or innate quality of justice so that he discharges the obligations of rulership rightly. Acquired justice cannot give him such a judicious bent of mind and personality. Justice constitutes the balancing wheel through which virtue and vice, right and wrong can be measured. Stability and prosperity in the affairs of seventy-two communities, meaning mean in general, are truly achieved only when justice with its full radiance prevails in the realm. The quote of Barani: 'If there is no justice in the world, the sons of Adam will not be table to drink tehri goblet of water in peaceful seclusion. Nor will they be able to stretch their legs in peace and contentment.' God Almighty has created kings and entrusted to them His authority and majesty so that they dispense justice. Extreme conduct has been forbidden by scholars in all other activities of life with the notable exception of justice. Men are instructed by these literati to resort to middle course in their conduct of life but in case of justice they have been particularly exhorted to strive their utmost to dispense justice. The status of a 'just king is next to that of a prophet.'

The term justice has been defined by Barani as the "putting of two litigants on par and maintain equality between them." The king is strictly warned against partiuality in law suits. Personal and political considerations should not disfigure and discolour his 'perfect justice'. He quotes anecdotes regarding the ideal justice of Caliph Umar Khattab and Sultan Mahmud, his eponymous hero. Among non-Muslim rulers he praises particularly Anusherwan the Just, the Sessanian emperor for his proverbial justice.[3] The generality of medieval Muslim writers on politics and government give similar importance to justice in human affairs. Ibn-i-ABir Rabi for example defines justice as the condition of the correctness of the locus of all actions and bases it upon the happy means between the rational and the animal faculty in man. Farabi, Ghazzali,

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[2] Barni, Zia-ud-din,Fatawa-i-Jahandari,(ed.,with introduction &notes by) Dr.Afsar Saleem khan,published by Research society of Pakistan,university of Punjab,Peshawar,September.1972,pp,116-118.
[3] Nasihat V.

mawardi and the rest, clearly specify that God Almighty loves those kings, who treat His people with justice and kindness. Justice to all of them is the fundamental justification and kindness. Justice to all of them is the fundamental justification and first conditrion of rulership. An unjust ruler on the Day of Reckoning will find no shelter and he will be demmed as the 'shadow Satan.' If even a frail old woman retires to bed hungry, God will hold the ruler responsible for her suffering. So virtuous kings treat dispensation of justice as a very binding and lofty responsibility.Comparing Barani's concept of justice with the modern concepts of rule of law and socialistic justice, naturally, a bog variation is noticeable. As a creature of medieval environment he grades men into several ranks and then fixes their status in the eyes of law. Equality of status and opportunity are conditioned by religious, social and birth factors. But among people of the same rank of course equality has to be sought. Moreover, justice stands for royal compassion, kindness, forgiveness and mercy. The king should see that his officers do not embezzle public money, charge excessive taxes, and the subjects eat and recline in peace.

Ruler and Justice

Ziauddin Barani talks about the essential qualities of ruler.His views are following;

Essential Qualities of a Good Ruler:

In order to shoulder the responsibility of a grave nature, e.g., earthly government, the rulers must be adorned with highly special and laudable traits of head and heart, Partly these qualities are the inheritance of ancestory and to some substantial extent they are cultivated. Plato's conceptual scheme of gold, silver and brass as essential conditions of the birth and race factor reflects itself thoroughly in Barani's convictions. Similarly, the theory that virtue and goodness are teachable and knowledge can be transmitted through education and training also finds suitable placement in the ethical philosophy of this vigorous spokesman of the Indo-Muslim medieval environment. A strictly class and caste-ridden social framework exercises Barani's mind, and the logic of self-effort and self-acquisition in the case of humble born mankind is futile. Historical illustrations selected by him indicated that such sections of men might put on an artificial garb of

external virtue and goodness but ultimately their inborn viciousness and perfidy expose them. Kingship being the exalted office of the Lieutenant of the Almighty Creater the earthly wielder of power must represent the lofty virtues of the Divine Sovereign.[4] Persons of humble origin cannot, because of the natural limitation of birth, race and environment aspire for this distinguished office of the 'Deputyship and Vicegerency of God.' To him the logical calculus –how can virtue and knowledge dwell in lowly brains – is extremely convincing.

From the social viewpoint also Barani tackles the issue of raising an ordinary individual to the lofty chair of rulership and sovereignty. His logic drives him to conclude that kingly office on earth is the pulpit before which the rest of the mankind prostrates in profound respect and veneration, and if the wielder of this chair happens to hail from a low stock, surely men will reflect no reverence for him. Men render obedience and submission on account of the factors of 'veneration plus awe'. The former carries more durable results, whereas the latter is shortlived. Here again the historical illustration is his major source of guidance. In the context of the Delhi Sultanate he viewed the regime of kings belonging to humble descent coming into existence through perfidy and deceit and toppling down shortly. The principle of heredity also plays upon his mind while advocating the theory of high 'hasab wa bnasab' for the ruler. Virtue is the product of blood relationship and social environment. Noble blood exercises influence upon social affairs and thrives in material affluence. It has the upper hand in enjoying the benefits of learning, efficient training, mature experience and polite etiquette, and thus when raised to the dignified office, it displays able rulership, judicious settlement of public affairs and above all magnanimity of heart.[5]

Keeping in view the necessary importance of the monarchical office Barani enumerates certain essential qualities for the aspirant of their chari. They can be summarized as manliness, eloquence, sharpness of intellect, free birth, mature wisdom, right religious convictions, innate justice and munificence.[6]

Manliness:

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[4] On the issue Plato's Republic and Aristotle's Politics reflect a happy community of views with the F.J. All the three hailed from supremely notable aristocratic cultural environments-Grecio-Indo-social structures.

[5] See. F.J./ ff. 217a-218b.

[6] Ibid., Nasihat XXI.

Impressive external physical appearance and fitness of physique are highly expedient for the kings particularly and in general also for the other officers of the State. The aristocracy in the Delhi Sultantate whether the Muslim or the Hindu governing class belonged to non Dravidian race Aryans, Turks and Mongols with fair skin and attractive countenance. Barani as a product of such an atmosphere exhibits full confirmation for the established code of life. Plato preceding him by a thousand years expressed similar reflection in response to his individual environment. Physical fitness of limbs is a general requirement for all, whether proletarians or the governing class. In human affairs the personal physical participation in the job incumbent on the holder of this office is undoubtedly necessary. The medieval sultan was a leader of men both in war and peace, in social affairs and politics and in morals as well as etiquette. His personality should not lack in either physical requirements or high mental attainments. Age stipulation is not, however, touched b y Barani perhaps because of the blood succession factor and the contemporary experience that normally the successors to the throne were below forty. Some other Medieval Muslim predessors of Baranhi in the realm of political ideas, e.g., Ibni-Abir Rabi and Farabi have also stressed on the manliness factor[7]. Leadership being the art of directing, motivating and co-ordinating individuals in medieval social framework needed a larger proportion of physical aspect of personality.

Eloquence:

Eloquence is viewed by Barani as a potential tool for acquiring leadership over mortals. Understanding and control are through verbal media. Direct communication through oral techniques is the wide spread practice of medieval forms of administrative patterns. Kings through their marvelloues eloquence impress the ulema, bureaucracy and the generality of mankind. The ever alive experience of his patron ruler Muhammad b. Tughluq possessing an extraordinary gift of eloquence establishing his repute for matchless scholarship and brilliance of brain automatically receives endorsement in the volume of his dicta on statecraft. In this Tarikh, he is full of commendation for this praiseworthy attribute to his patron ruler[8]. A successor of

[7] See Sherwani, Mus Pol and Adm pp pp. 54, 81.
[8] T.F.S. opp cit.

Barani, Fazl Isfahani, in his treatise emphasizes the need of eloquent speech for his ideal rulers.[9] William Pitt, the younger, in 18^{th} century England rose to the distinguished seat of premiership at an young age and he laid the precedent of eloquence for successful prime ministers.

Sharp Intellect:

For his ideal kings Barani lays down the indispensable requirement of sharpness of intellect by which he means both mental maturity and the power of discernment of men and material. With this developed faculty of judgement alone can the supreme administrator on earth discharge his arduous and varied functions. The depth of vision of the rulers should be so penetrating that from the very observance of the external disposition of men the inner motives could be apprehended.[10] Plato had much earlier realized the necessity of a similar mind for his philosopher kings and guardians of the State. Barani like him views knowledge as a fountain of mental richness but unlike the latter he precludes philosophy, logic and metaphysics as the source of right mental attitudes.[11] Another medieval Muslim predecessor of Barani, Farabi, considered his Rais-i-Awwal to be a man, who from his very inherent nature and training was endowed with the intense capacity to observe deeply the environment and appreciate it fully.[12] Ibn-i-Tiqtiqa, the author of a comprehensive treatise on government and administration laid down similar qualification for ideal prince.[13] However, let it not escape out attention that like the ancient Greek and Brahman literati Barani debars the lower sections of the population from the inherent possession of the power of intellect and its cultivation through educational discipline and training. In this great historical work he has plainly clarified the danger of offering academic opportunities of life to the low born.[14]

Free Birth:

Sanctity of birth is deeply respected by Barani like a good many medieval and ancient scholarly minds. Free birth denotes in his particular case not only high aristocratic

[9] S.M.f. 15a
[10] F.J. Nasihat X.
[11] Ibid f. 10, Republic. Book, 11.
[12] Ara p. 88 as cited by Sherwani, p. 79.
[13] Eng Trans p. 14 and MS Suluk-ul-Muluk, f. 15a.
[14] T.F.S. Intro, op. cit.,

origin but also the non-slave family connections. With free birth he tries up the cultivation of a free mind and judegement. The pressures of masterly domination should not restrict the idea of ruler's freedom to take decisions and formulate policies conducive to the religious welfare of the realm.[15] Examining the speculations of Barani in the context of the Delhi Sultanate the first founder of this empire, Qutub-ud-Din Aibak (1205-10) and his brilliant successor Shams-ud-Din Iltutmish (1210-20) were by origin slaves and inherited the right to succession through this principle of slavery. Manumission by their masters did not take away, however, the original slave status for which Barani exhibits severe condemnation. On one occasion Shihab-ud-Din Muhammad Ghori, the master and patron of Aibak , rebuked one of his bold courtiers who expressed regret for the Sultan being without a male heir by saying that his loyal slaves were worth more than hundred sons and declared them to be the rightful occupants of his Indian peculiar

Following the Khilji dynastic revolution the right to succession was strictly limited to the ruling family. When a great noble man of the empire with the force of arms ascended to the imperial throne his right was not questioned because of his class origin. But if the revolutionary hailed from the lower strata of society and was a Hindu slave's issue the storm of criticisms arose. Barani in his estimate held the early founder of the Delhi empire in enormous veneration. Although bought in slavery these personalities literally were not slaves. A Turkish noble man by accident might be enslaved but in reality his original hereditary connections are not damaged. Greeks in Aristotle's judgment are not real slaves. Accident of war might result in serfdom but they are not to suffer like natural slaves. Barani by free birth actually means high aristocratic connections coupled with Manumission if originally enslaved. His 'zar kharid' or a purchased slave refers to low class Hindu sons of slaves out of whom some ventured to ascend the throne of Delhi. Barani is an admirer of hereditary monarchy and respects the principle of 'istihqaq', legal right, and abhors the contrary principle of 'taghallub' or usurpation. But in the case of Khilji and Tughluqs of the Delhi Sultanate, the usurpation was justified on grounds of the userpers' patrician origin and loyalty for the

[15] F.J. f. 72.

royal house.[16] Efficiency and moral integrity are by products of birth in social theory. Other political treatises compiled in India like the Adab ul-Harb, Zakhirat-ul-Muluk, Muaizza-a-Muaizza, etc. do not speculate on birth condition. In the case of the first writer the Turkish slaves were the proud successor of their masters and in the case of the two Mughul writers the throne continued to be occupied by the ruling family. The peculiar kind of Barani's social situation did not confront them and hence the difference in the examination of political issues in the case of these theorists exists. However, Fazal Isfahani giving his reflections outside Indo-Pakistan in 16th century touches the issue of good birth for his ideal rulers, the Imam as Mawardi did in 11th century.[17]

Wisdom and Intelligence:

The degree of emphasis laid upon the king's highly developed mental faculty, knowledge, deep vision and intelligence are to be judged from the fact that more or less similar traits of character and personality Barani stipulates twice with changed wordings. The ruler as the holder of the power of supreme command over seventy-two communities has to have a fine rational faculty, which has been sharpened through heredity, sound educational training and right religious convictions. Faults on an ordinary mortal do not contain such adverse and fatal consequences as those of the ruler. The ruler has crucial duties to perform and in the absence of wisdom and intelligence these duties cannot be discharged efficiently. Among the various contributory factors of wisdom and intelligence Barani as a realist attached a high degree of importance to experience and practical participation in state affairs. In his History he gives an account of the fine intellectual qualities of Muhammad b. Tughluq but also cite his faults because of haste and tenacity. On the other hand from the viewpoint of formal education and academic training the great Ala-ud-Din Khalji was even below a mediocre but practical participation in administrative affairs enabled him to handle governmental affairs very successfully. Wisdom and maturity gained through what Barani styles as the mirror of experience are highly useful for the proper execution of governmental responsibility.

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[16] Politics, Book I, Chap IV.
[17] T.F.S

The wisdom of the ideal ruler by no means implies its application to the questioning of the fundamentals of religious dogma. Reason should be the source of strengthening the religious convictions of the monarch rather than shaking the belief. Hence rational sciences sharpening the critical faculty of the ruler should be precluded from the syllabi of learning.[18] In advocating such recommendations once again Barani speaking as a powerful spokesman of his particular Greek sciences had made him advanced in thinking and his administrative projects failed to appeal to the people of 14th century Indo-Pakistan. Despite his high and brilliant quality of knowledge, Barani witnessed the aversion and hatred of the public towards this ruler.[19] So knowledge and intelligence of the crown should not render it ahead of the times. It should make him flexible, dynamic and understanding.

Other medieval Muslim political theorists prescribe the possession of perfect understanding of human character, depth of vision, retentive memory and wisdom as the prime qualities of a ruler. The names of Farabi and Ghazzali in this connection also come into the forefront.[20]

True Religious Belief:

The prime interest of Barani lies in the personality of rulers and the art of statecraft in general. In this art he visualizes the salvation of mankind. Even rulers not belonging to a particular faith are duly praised by him. Alexander of Macedonia and Qadan Khan of Khita among the kings belonging to non-revealed religions are especially admired by him for keeping their government on an even keel. The pre-Muslim Persian rulers like Abusherwan, the Just, Kaiqubad and some others appeal to him excessively for their superior methods of government. But for his ideal ruler he place Supreme importance on the possession of true religious convictions. Sound reasons to him emanates from following the dictates of faith. Unless a king is distinguished by the staunchness or unshakable quality of his faith, he is not considered worthy of occupying the dignified office of the Deputy and Vicegerant of Allah and His Apostle[21]. Now sound faith according to Barani is the by-product of heredity. Belief in Islam should flow in the

[18] F.J. op cit.
[19] T.F.S.
[20] Ara op cit.
[21] F.J. f. 20.

veins and sinews of the ideal ruler from generations so that the evil consideration of aspotacy and insolence do not cross his mind ever. Religious zeal and enthusiasm to him emanate from hereditary faith, Time and environment strengthen the understanding of religion and its roots get deeply grounded.

Considerable stress has been laid upon the 'Iman' factor by Barani because he expects the ideal ruler to perform some strictly religious duties. His idea sovereign is dedicated to the task of illuminating and spreading the religion of Islam in the universe. He is charged with the prime responsibility of enforcing Sharia rules of daily conduct. In his ideal state the priciplle of 'Amrbil-Maroof wa Nahianil Munkar, i.,e., 'enjoin good and forbid the evil' should prevail with full solemnity. The non-Muslims belonging to the non-revealed religious denomination, heretics, philosophers and all others, who demonstrate ill-will against the religion of Islam should be kept in suppression an destitution because of the continuous danger expected from the evil[22].

The strict adherence of the ruler to the word of God, His Apostle and what the holy scholars of Islam prescribe lends to him the necessary courage and confidence to take care of his religious and temporal responsibility. Barani quotes anecdotes from the history of Islam as to how Divine assistance granted victory to the caliphs and kings of Islam against the powerful forces of infidelity, polytheism and heresy[23] . His ideal sultan, Mahmud of Ghaznnah as depicted by him maintained unshakable faith in Orthodox Islam and that is why he stood victorious in his Indian exploits. He banned the practice of evil religions in his realm and extirpated the molesters of Islam, the heretics and philosophers. The good Muslim sultans must follow Sultan Mahmud and the recompense of their religious services in the next world would be boundless in terms of compensation.

Another significant feature of the religiosity of an ideal ruler is his aversion for the ephemeral world. The ruler as a sheer requirement of duty has to put on royal robes, reside in gorgeous palaces, hold grand courts, indulge in limited drinking and pleasure but he always places supreme reliance upon the merit of the next world. This material world is viewed by him as a temporary abode and for a single moment the fear of the

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[22] F.J. Nasihat XI.
[23] Ibid. Nasihat II.

Day of Judgement does not spare his thinking. If the ideal sultan being a mortal exhibits fault in the observance of his five times daily compulsory prayers and obligatory fasting the Almighty is bound to forgive him in view of his grand service of directing innumerable numbers on the right path[24]. Barani is trying to combine two practically difficult patterns of behavior in a single ruler. His ideal sultan in the sphere of 'Iman' should follow the Holy Prophet and the Four Pious Caliphs but in worldly tradition of court life and etiquette the non-Muslim Sassanian rulers are his models. On grounds of his high quality of realism and mature historical experience he clearly expresses that this contradictory behavior pattern is an indispensable adjunct of successful government. Rulership has to bear this un-Islamic stigma but in the ultimate interest of religious stability. Necessity renders unlawful things permissible in view of a certain situation and ruler's code of behavior is grounded on this dictum. An objective perusal of Barani's such a concessional treatment of religious faith renders him liable to a good deal of criticism but viewing his recommendations from the angle of political expediency the critics are bound to turn into apologists.

Almost all the Medieval Muslim political theorists are found to emphasise upon the religious side of the ruler's personality but hardly any one of them would examine the issues of dichotomy involved in being a good Muslim and a good empire builder. It is this particular aspect treatment of the pertinent problem in his marvelous treatise, which truly imparts to Barani the credit of reality-oriented political theorist. His detailed examination of the institution of monarchy and the concept of imperialism and unhesitatingly declaring them as un-Islamic at the time of the zenith of Muslim Imperialism win for him the applause of an objective political theorist. At the same time his effort to reconcile the two opposites by permitting concessions in view of historical situation and political expediency stamp his political doctrines with a high degree of realism.

Noble Birth:

High aristocratic lineage and birth in Barani's judgement constitute the sheet anchor of virtue and goodness. His ideal sultan should be adorned with his ideal with the prime quality of noble and purity of blood. The birth factor determines the degree of virtuous

[24] F.J. f. 6.

conduct and disposition. From the offsprings of humble born virtue cannot be expected. Impure blood flowing in the veins of such issues restrains goodness from entering their bosoms. Similarly, the well-born, no matter how destitute they may become, will always display good conduct. Several anecdotes from factual as well as traditional history are quoted in support of his thesis that blood consideration and heredity serve as high recommendations to assess the value and station of an individual. Low born men fail to honour their pledges as Umr bin Lais, the perfidious brother of Yaqub Lais, the Saffarid low born amir did.[25] Externally, it may occasionally happen that virtuous behavior is displayed by such persons, but this would be superficial. It would really be a vice to disguise a virtue and if at all their goodness has been found as genuine, Barani concludes that at some stage these men of impure birth had some mixture of noble blood in them. Humble birth and noble conduct are two diametrically opposed qualities.[26]

Monarchy and rulership demand high birth so that they represent goodness and righteousness. They are not compatible with ignoble deeds miserliness and small of heart. Kings being 'shadows' of Almighty on earth should be adorned with the qualities of justice, munificence, intelligence and right conduct. An issue of a shopkeeper, carpenter or butcher is raised in poor circumstances and unhealthy environment and he cannot develop these essential requisites of the kingship. Again to support his argument Barani draws assistance from past history by emphasizing that in ancient times, when in Yemen, Egypt, Syria, Bysantium and India rulership was confined to one noble family, the affairs of the government were conducted in the right manner. So in his ideal polity the state of tranquility is maintained through good government, which rests on the accident of birth. At one place Barani clearly remarks that the Mongol and Hindu slaves have been raised by their Muslim masters under their personal care but on account of their poor family origin and impure blood they have always proved disloyal and treacherous. Fear of God cannot be embedded in them. But the noble blooded Turkish slaves, because of their high lineage have proved more loyal and faithful to

[25] F.J. Nasihat I.
[26] Ibid, ff. 218-219.

their masters than even real sons and relatives.[27] Low origin breeds perfidy, treachery and brutishness. Sultans must hail from noble stock as kings of men and the principle of hereditary succession should be established in a good Muslim realm. A general respect for birth is usually the theme of medieval Muslim writers on political ethics but Barani certainly reaches an extreme stage. The discipleship of Sheikh Nizam-ud-Din Auliya ought to have removed to some degree at least this aversion for the common crowd.

Justice:

Barani declares justice as the chief pillar on which the super structure of an ideal should be raised. In his ideal ruler this quality should be embedded in his person through and through. Religion and justice are twins. Justice forms the cornerstone of rulership. An hour of justice is considered by him better than seventy years of religious devotion. The king must possess an inherent or innate quality of justice so that he discharges the obligations of rulership rightly. Acquired justice cannot give him such a judicious bent of mind and personality. Justice constitutes the balancing wheel through which virtue and vice, right and wrong can be measured. Stability and prosperity in the affairs of seventy-two communities, meaning mean in general, are truly achieved only when justice with its full radiance prevails in the realm. The quote of Barani: 'If there is no justice in the world, the sons of Adam will not be table to drink tehri goblet of water in peaceful seclusion. Nor will they be able to stretch their legs in peace and contentment.'[28]

God Almighty has created kings and entrusted to them. His authority and majesty so that they dispense justice. Extreme conduct has been forbidden by scholars in all other activities of life with the notable exception of justice. Men are instructed by these literati to resort to middle course in their conduct of life but in case of justice they have been particularly exhorted to strive their utmost to dispense justice. The status of a 'just king is next to that of a prophet.'[29]

The term justice has been defined by Barani as the "putting of two litigants on par and maintain equality between them."[30] The king is strictly warned against partiality in law

[27] F.J. f. 72a.
[28] Ibid., f. 44a.
[29] F.J. f. 46a.
[30] Ibid f. 135a.

suits. Personal and political considerations should not disfigure and discolour his 'perfect justice'. He quotes anecdotes regarding the ideal justice of Caliph Umar Khattab and Sultan Mahmud, his eponymous hero. Among non-Muslim rulers he praises particularly Anusherwan the Just, the Sessanian emperor for his proverbial justice.[31] The generality of medieval Muslim writers on politics and government give similar importance to justice in human affairs. Ibn-i-ABir Rabi for example defines justice as the condition of the correctness of the locus of all actions and bases it upon the happy means between the rational and the animal faculty in man[32]. Farabi, Ghazzali, mawardi and the rest, clearly specify that God Almighty loves those kings, who treat His people with justice and kindness. Justice to all of them is the fundamental justification and kindness. Justice to all of them is the fundamental justification and first conditrion of rulership. An unjust ruler on the Day of Reckoning will find no shelter and he will be deemed as the 'shadow Satan.' If even a frail old woman retires to bed hungry, God will hold the ruler responsible for her suffering. So virtuous kings treat dispensation of justice as a very binding and lofty responsibility.Comparing Barani's concept of justice with the modern concepts of rule of law and socialistic justice, naturally, a bog variation is noticeable. As a creature of medieval environment he grades men into several ranks and then fixes their status in the eyes of law. Equality of status and opportunity is conditioned by religious, social and birth factors. But among people of the same rank of course equality has to be sought. Moreover, justice stands for royal compassion, kindness, forgiveness and mercy. The king should see that his officers do not embezzle public money, charge excessive taxes and the subjects eat and recline in peace.

Munificence:

The ideal Muslim sultan of Barani is a very munificent ruler. He nourishes his entire subject – even the wild birds and animals. Monarchy can never be compatible with miserliness and niggardliness. It can sometimes be compatible with infidelity but it can never compromise with petty and low mindedness. The ideal sultan believes in conferring honours and gifts upon the people of his realm with whole heartedness but

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[31] Nasihat V.

[32] See Sherwani p. 55.

never does he accept any return or material reward from the subjects. This is the true test of his munificence. In the event of the ruler displaying smallness of his heart and miserliness, the subjects will lose all respect for him making his royal prestige suffer tremendously[33]. Another accompanying feature of the royal munificence consists in his possessing lofty aspirations. Low aspirations and strategems excite the hatred and the aversion of the public. Loyalty springs from caretaking by the ruler. When he recognizes the claims of his nobles and the public at large, the roots of loyalty stem deeper. Robes of silver and gold and gifts of fiefs and jagirs render men obliged and faithful. Love for wealth, opines Barani, is deeply ingrained in human nature because they satisfy requirements. The ruler, while conferring gifts and robes has to look to their suitability in view of his majestic position. His patronage should not be like that of the common crowed. Being the ruler of men, his gifts should also be superior in their value and worth. Slight casualness in this sphere is liable to shake the balance of the kingdom.[34]

Another characteristic of the high royal aspirations lies his is boundless ambition. The ruler is never satisfied with the available territorial conquest. He is imbued with the spirit of zeal to bring under control more and more. He looks for dominance over the entire planet Kingship symbolizes majesty, which is obtained through the command of supremacy or ascendancy over the rest of the ruling authorities[35]. This particular line of thought brings Barani very close to Kautilya and Machiavelli with regard to their theories of power politics. But Barani being a Muslim political theorists, is polite and soft in his language. The raison d'etre of monarchy, is imperialism and expansionism. Barani's religious affiliation prevented him from being blunt and outspoken. He expresses similar judgements but in guarded language and phraseology. His ideal ruler is an emperor in the true sense of the term. His awe and grandeur extended over all things, material and non-material, men and animals alike. He has unlimited resources at his disposal but his goodness lies in using them for the service of the Lord of the World, God Almighty. He should not be blinded and intoxicated by power. This is Barani's repeated exhortation to his ideal ruler. He draws evidence from past history

[33] F.J. Nasihat IV f. 32b.
[34] Ibid., f. 167b
[35] Ibid, Nasihat XX.

and popular tradition as to how kings adorned with the quality of munificences, high aspirations and righteous use of their material resources have commanded respect not only during their lifetime but even afterdeath[36] .

Unlike the tradition of the Pious caliphjs and the mystic theory of government Barani grants full permission and freedom to his ideal Muslim sultan to live gorgeously, indulge in physical pleasure and material luxury but always keeping in mind that he is going so with a view to imposing state authority[37]. This royal pattern of living is adopted by him as an inescapable necessity. However, his wisdom prevents him from being lost in such pleasures. These patterns of behavior are a means to an end- the conquest of lands for the spreading of Islam and the establishment of the supremacy of the Oath of Affirmation. Barani, like his great predessors, Mawardi and Ghazzali is comprising the 'ideal with the real'[38]. He is a vigorous representative of his medieval set up. The sultans of his contemporary times were persons of high aspirations; they are mighty empire builders and were proverbial in conferring gifts and honours. Their courts had attracted the literati from the distant corners of the world and the imperial capital at Delhi dazzled with their brilliance. They held pleasure parties and indulged in worldly luxury. So Barani drew the source material of his political ideas from the historical experience and recommended such a pattern of life as an essential requirement of empire building and strong government, which could strengthen the cause of religion in the realm. Only he preached moderation in the indulgence of these vices so that state affairs did not suffer on account of the royal carelessness. His ideal sultans were particular about their religious performance of duty. They prayed regularly and never missed the Friday congregational prayer. If they entertained themselves with wine as a mark of royal majesty, they did not drink in excess losing their physical sense. At the approach of prayer time they stood up and prostrated before the Lord of the Seven Climes[39] Unlike his ideal rulers, the fourteenth century mystic writer on political ethics, Ali Shihab Hamadani, shows remarkable strictness about the ruler's following of the Sunnah of the Holy Prophet and the four Pious Caliphs. He enters into

[36] F.J. Nasihat,, XV.
[37] Ibid. oft cit.
[38] Ibid, oft cit.
[39] F.J. op. cit.,

no compromise with the contemporary historical reality. Political expediency and religious goodness are not irreconciliable in his judgment[40]. To Barani the simplicity, leniency and good government of the Pious Caliphs proved unsuitable and fruitless in his age of rascals and brutes[41].

Duties of Ideal Sultans:

Already the aim and purpose of government and administration according to Barani have been described. Here it will suffice to list the important duties of Barani's ideal rulers. In modern times we have a tendency to discuss the functions of State under the headlines of essential and optional, constituent and ministrant or police and welfare. Barani and other medieval writers do not follow such a scheme. Conversely, they normally divide them into religious and secular functions. Each of these specific functions contains in itself a wide ranging number of allied functions making the sphere of State activity extremely wide.

Religious Duties:

The protection and propagation of the religion of the True Faith, i.e., Islam is the cardinal religious duty of the ideal rulers. To perform this duty in the proper manner the king has to struggle hard for the supremacy of the traditions of Islam. He should embark upon holy jihad and ghaza. But the extirpations of the unbelievers, idolators, and the followers of false faiths in his mature judgment is an impossible task. He cites the example of the zealous caliphs of Islam, who employed their entire energy in the extirpation of the unbelievers and idolators, but despite this vigorous effort they failed to succeed in putting an end of their life. So Barani recommends that these evil wishers and molesters of Islam should be reduced to the position of economic destitution and political insignificance. Such an action will bring merit to the ideal Muslim Sultan and his name will remain ever immortal. The recompense of such a meritorious deed, says Barani, is beyond the power of pen to describe.[42]

Among the religious duties of the ideal Muslim ruler Barani also includes the suppression of free thought. In his ideal State only the flourishing of the Traditional

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[40] Z.M., f. 3,

[41] F.J., op. cit.

[42] F.J. f. 7a, An interesting comparison is found in this respect between Barani and Fazal Isfahani. See S.M. ff. 18 b, 23a.

Sciences, i.e., Quran, Tafsir, Hadis, Fiqh, History, Government and Administration should be allowed. Rational Sciences like Logic, Mataphysics and Philosophy should be prohibited. The reason for this recommendation lies in the latter's causing doubt in human mind about the truth of revelation, miracles and firm Iman. He exhorts the ideal ruler to patrnoise the religious scholars of Islam, the mustic sheikhs, Sayyids and the ulema. These men should be granted state stipends for their economic requirements of life and they should also surround the ruler as his counselors and advisers. This will foster respect for the ruler in the hearts of the subjects. In the next world the king will obtain his salvation and will rank among the 'Qutbs' (Axis) of the world. Barani appears more particular about the king's religiousity in State affairs as compared with his personal religious observances. Very explicitly he observes that if ruler is deficient in his religious genuflections God Almighty will forgive him for this fault. But if he lacks in performing his religious public duties his end will be shameful as he will be cast in the innermost pit of heel on the day of judgment. He believes strongly in the medieval maxim, "people follow the religion of the rulers." In case, if the king publicly is witnessed as slack in his religious performance of his rites, this will exercise an unhealthy and injurious effect upon the subject.[43]

This intolerant outlook and religious communalism on the part of Barani are astonishing from the viewpoint of the inner spirit of Islam, which never recommends humiliation of non-Muslims. However, from the angle of the medieval prevalent notions and practices Barani is demonstrating the influence of his times. The religiousity of a ruler in those days was tested by the degree of aversion he maintained for other codes of life. It was treated as a cardinal duty of a medieval king to strive for the illumination of the faith of the realm and this, of course, implied the adoption of an attitude of intoleration and contempt for others. Barani, in the perspective of the Delhi sultanate, observed the recurring rebellions of the Hindu chiefs and he viewed them as the greatest opponents of Islam. In the days of his patron, Sultan Muhammad b. Tughluq, he also watched the economic prosperity and political influence of the Hindus and this did not commend to his judgement. He, as a direct reaction of this imperial policy employs abusive and highly uncharitable language for the Hindus in his political

[43] F.J., ff 7a-8a.

treatise as well as his historical work[44]. Another medieval Muslim predecessor of Barani and a writer on statecraft, Nizam ul-Mulk Tusi viewing the Ismaili heretics as the great source of mischief and trouble recommended similar contemptuous treatment for them[45]. So, in reality it was religious factor less and political expediency more, which induced these two versatile political theorists of their times to foster such ideas. Monarchy derived no legal basis from the Quran and these theorists justified it on the basis of its protection and propagation of the faith.

Secular Duties:

The Fatwa-i-Jahandari does not examine these duties at one particular place but they are discussed in the entire body of the text. Their scope is extremely wide. Unlike the British sovereign Barani's sovereign does not reign only but both reigns and governs. The American President reigns but does not govern and the scholars before De Gaulle opined that the French head of the State neither reigned nor governed. Medieval Muslim political theory and Barani chiefly vests the ruling authority in the sovereign – be it executive, legislative or judicial. The king is at the same time the law-giver, its executor and the supreme court of justice. The restraint, however, of the Holy Muslim law will prevent him from legislation contrary to it. As the head of the executive branch he serves as the 'defender of the faith', fountain of all honour', the 'chief magistrate of his subjects', the secretary of State for foreign affairs and the supreme commander of the defence forces[46].

As the foundation of all honour be acts as the singular source of the conferment of honours and titles. This power is exercised by him in the larger interests of religion and the State. While conferring honours and gifts he will keep his eyes fixed on the merit and loyalty of the person concerned. In merit the birth factor, of course, reigns supreme, Barani clearly warns the ruler that in case the latter exercises this power with negligence and personal consideration the affairs of State will create confusion rendering the sultan hateful in public estimation.[47] Some anecdotes are quoted by him

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[44] T.F.S. op. cit. F.7., opp. Cit.

[45] S.N. Chaps 44-49, Adab-ul-Muluk of Fakhr-i-Mudabbir dexotes. One full chapter is devoted to religious duties, f. 151a.

[46] F.J. Nasaih IXa IV, V, XII, XIV etc.

[47] Ibid, XV, XXI.

to relate extreme degree of hatred for the ruler by his subjects ultimately resulting from murder.

As the chief executive of the realm, Barani's ideal sultan is entrusted with the power of making all high ranking appointments – the wazir, army commanders, qadis, dadbeks, muhtasibs, kotwals, royal intelligentsia, State governors, tax-collectors and others. The author prescribes certain stipulated conditions for these positions, which the ruler must keep in mind. Here again birth, good blood and professional efficiency factor are enumerated. In no case the ruler should patronize the lowly and the common crowed. Among these duties the maintenance of peace and order receives great priority. Kingship or political power are created because of this basic requirement of the ensurance of peaceful conditions of life to the mortals amidst which they could discharge their religious and mundane obligations. For this purpose, the ruler maintains a standing army, constructs forts, organizes a sound administrative machinery and personally exercises supervision over the affairs of the realm . For establishing internal contentment and harmony he fixed the prices of commodities of general use bringing the facilities of life within the reach of everyone. He holds public courts within the capital and outside to listen to the grievances of his subjects granting them all freedom of representation. Barani says that some famous rulers have been purposely keeping fast on the day of deciding cases so that no evil could spring from them. Like Kautilya he prescribes a daily time table for the ruler enabling him to perform his religious devotions as well as State duty soundly. Slight default and slackness in political affairs in his opinion are enough to topple the realm down. Barani's realism is at its best even while prescribing the royal duty. He is viewing the ruler as mortal and grants him the concession of worldly temptation. The king is allowed to keep a harem, drink wine, hold convivial parties and indulge in pleasure but under grave restraints. These things are not an end in themselves but purely a means to higher end. As a human being he has these desires and secondly, they added to his majesty and augmented his political power.[48]

Bureaucracy:

[48] F.J. off, cit.

Bureaucracy is an indispensable instrument of good government. Administration in the past and in modern times has been relying upon the active assistance of this institution. Pfiffner and Presthus rightly say that "bureaucracy is a historical phenomena stemming from antiquity brought about largely by the need for technical skills".[49] In a specific sense W.F. Willoughby uses it "as a body of public servants organized in a hierarchical system which stands outside the sphere of effective public control."[50] Compared with their modern counterparts the medieval bureaucracy did not possess the characteristic of selection through competitive service examinations and permanency of tenure. Both the appointment and the termination of service rested on the will of the monarch. Loyalty to the ruling regime and efficient performance of duty were the criteria for promotion. The conditions of service depended upon the sweet will of the monarch. Barani, however, continuously exhorts his ideal sultan to refrain from being self-willed and self-seeking. The officers of the realm should not be removed from their posts unnecessarily. He devotes a full Nasihat citing the dangers of the removal of these officers on account of change in the ruling authority or dynasty.[51] He recommends an attitude of benevolence and compassion for the State personnel. At every step Barani appears to be very particular about the prevalence of such a state of affairs in the realm so that all lead a life of bliss. His is an ardent advocate of peace and order and exercises all caution against the slightest ground for the uprooting of tumult and unrest in the kingdom. The bureaucracy comprising of noble-blooded, God fearing and judicious men will be an important contributory factor for the establishment of happy conditions of life in the society.

Wazirs:

At the helm of affairs and next to the monarch only stands the wazir of the empire. Barani devotes considerable space on the importance, usefulness and blessings of wazirs for a State. He specifically lays down that wise wazirs are a great bounty of God Almighty conferred upon kings. In fact the greatness of this bounty can be estimated from his remark that after Prophethood and kingship the third highest station

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[49] Public Administration, p. 58 Ronald 1960.

[50] Principles of Public Administration, p. 191, Indian edition 1952.

[51] F.J. ff. 18b,. 20. Also see A.H. f. 15b

created by God, is that of a prudent wazir[52]. The two illustrious kings on this earth were Solomon and Alexander and both were gifted by Almighty with unique wazirs like Asif barkhiya and Aristotle. This implies that the glory of a realm is very much dependent upon the wisdom and sagacity of the wazir. Similarly, the immortality of the two other famous kings, Ardheshir Babaken and Anusherwan, the just, was chiefly due to the prudence of their wazirs like Abr Sam Bazuchemehr[53]. Barani further says that a wazir is the alter ego of a king. He quotes the ancient precept that 'a king without a (good) wazir is like a palace without foundation and bread without salt. The wazirs are the right hands of rulers and in the event a minor king succeeds to the throne they are the real keys to administration. The basic job of a wazir is to offer sound advice to the king. The king is a single human superior and he cannot take care of the huge paraphernalia of State affairs. The wazir with the assistance of high intelligence, vast experience and mature wisdom proves as a great helper. In order to make sure that the wazir is, indeed, a person of real talent Barani recommends that the king should console all the great notables of the real testifying to the efficiency of the candidate. This care and caution are highly expedient because the judgement of the wazir depends upon the soundness of the governmental affairs.[54]

The keystone, nature and the primus inter pares status of the wazir as laid down by Barani finds similar reflection in the writings of other medieval Muslim Political theorists. The quote of Ali Shihab Hamadani: "The plain truth is that the wazir is a sharer of the kingdom (along with the emperor)"[55]. Fazal Isfahani observes: "He, whom the Imam or Sultan makes his deputy in order to carry on his (imperial) administration, and from whom he seeks advice is a wazir"[56]. Kaikaus, the author of Qabus Nama, demonstrates full consciousness of the importance of the wizarat and admonishes his son to cultivate the talent of administrative science and high skill in accountancy so as

[52] F.J. ff. 18b, 20, Also see A.H. f. 51b.
[53] F.J. f. 20. See Nasaih Nizam ul-Mulk f. 218a.
[54] F.J. ff. 18b-19a.
[55] Adab ul-Harb f. 51 b.
[56] Suluk ul-Muluk, f. 18a.

to deserve the office of a wazir.[57] However, the distinction between wazir-i-tawfiz and tanfizas in al-Mawardi fails to find citation in the Fatawa-i-Jahandari[58].

Other Imperial Officers;

Among these officers Barani on the civil side attaches great importance to the offices of governors, royal intelligentsia qazis, dadbeks, muhtasibs and tax-collectors. After describing the importance of these offierces he discusses their duties and qualifications. Among the duties, of course, a great variation is laid down in accordance with the specialization of each function. But so far as the qualifications are concerned Barani generally agress upon the purity of birth, virtue, honesty, knowledge and loyality for the sultan as prerequisites for each office. These officers represent the emperor and should be his true image. The subjects judge the character of the sovereign from the behavior of his officers. So the king must as a rule make thorough enquiry about the birth and lineage of his subordinates so that evil does not spring from their actions. These officers must possess right religious convictions also so that they do not indulge in bribery and corruption. All these officers are the active helpers, supporters and sharers in the power of the monarch. For the slightest default in their performance of duty the king will be questioned before the Divine Throne on the Day of Judgement. Their evil character will bring ruin and chaos in the realm. Barani also discusses the additional individual qualifications of some officers like the muhtasibs, who should be strict in the performance of their duties. Similarly for the royal ambassadors and envoys he recommends the special quality of quickness of mind and extraordinary intelligence[59]However, unlike Kautilya he does not consider women important for purposes of the Central Intelligence and Federal Bureau of Investigation. He refrains from indulging in the discussion concerning the eligibility of women to important offices although in the context of the Delhi Sultanate women had risen to be rulers. But, Barani belonging to the medieval ulema class could not accept the logic of making the fair sex participants in public affairs. In one respect he stands on a higher pedestal, when compared with Nizam-ul-Mulk Tusi, who specifically condemsn the 'petticoat government'. Evasion at least is better than clear negation.

[57] See Levy, Eng Trans, p. 211.
[58] Urdu Trans of Ahkam, Chap 11.
[59] Ibid, f. 10a.

Organization of Army

The Fatawa-i-Jahandari appears deeply concerned with the role of the armed forces in imperial affairs. This enormous emphasis is justified in the context of the historical and geographical situation of the Delhi Sultanate. He says that the organization and maintenance of a strong army is one of the most indispensable requirements of the empire. The king will fail to do justice to his both religious as well as seculiar duties in the absence of the strong army. He quotes the popular Sassanian precept: "Kingship is army and army is kingship"[60]. The institution of monarchy rests on the pillars of government and conquest but both these accomplishments are obtained through the medium of a well-organised and equipped armed force[61]. He quotes the precept propounded by the mighty king Jamshed of the ancient times that 'it is the loyal army which breaks the neck of the head strong opponents and maintains justice and peace in the realms.[62] From this argument it appears that Barani is a believer in the theory that force is employed in human life in order to prevent tyranny and safeguard peace and plenitude. Force plays a predominant role in human affairs and is a necessary attribute of the State. It is an indispensable instrument of rulership but not its essence, however.

The relationship of the king with the army, according to Barani is based on filial foundations. The ruler should be willing to hand over his personal arms and horse if the royal soldier desires so. The consideration of financial safety should not haunt the royal mind when it concerns the requirements of the army[63]. Five essential principles have been enunciated by Barani regarding the maintenance of the army

(1) The King must be informed about the recruitment of the army annually.

(2) It is obligatory upon the king to take to special care of the provision for the families of the soldiers and their welfare

(3) The king must institute enquiry twice a year about the supply of arms and horses to the soldiers.

(4) The king must conduct tests for the soldiers in the art of horsemanship to safeguard against cowardice and inefficiency.

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[60] Ibid, f. 65a.

[61] F.J. Nasihat, VII.

[62] Ibid.

[63] Ibid, 65b.

(5) The king must ascertain that the army commanders are persons of pious disposition, well-born, valiant good natured and properly selected.[64]

Barani once again displays a high degree of realism based on close association with the contemporary practice of governmet and recommends that the army should not be recruited from a single nationality or group. Homogenity in the army serves as a constant source of threat for the king because it breeds unity[65]. He further suggests that the soldiers should not be left idle at all. Idle mind in the case of soldiers gives room to devil's workshop. If not engaged in battle the troops should be kept engaged in the collection of taxes, patrolling the frontiers, demolition of forts, clearing of forests for hunting.[66] In order to win the goodwill and confidence of the troops Barani exhorts the ruler not to be strict with them in the case of the distribution of the booty for men love gold and silver. In a highly realistic fashion he recommends that during the time of campaigning the ruler must arrange in such a way that the troops have the luxuries of life on the battlefield like sumptuous food, pickles, chutneys, alcohol, music, dancing, etc. So that psychologically their morale remains up. The feeling of absence from home might discomfort the troops resulting in poor performance and lack of chivalry,

Barani also discusses the advantages and disadvantages of organizing a slave army. Such an issue was highly pertinent in the context of the Delhi Sultanate.[67] He also touches the question of the various modes of making payment to the troops. The knowledge, which Barani demonstrates in connection with the oprganisation of army is largely based upon personal experience and association obtained through his relatives engaged in imperial service and his own close association with the ruler, Sultan Muhammad b. Tughluq for over seventeen years. The Fatawa-i-Jahandari can safely be utilized for the obtaining of detailed information about the civil and military set up of the Delhi Sultanate.

Economic Stability

Good government, law and order are dependent upon economic stability. Having fostered such a point of view Barani proceeds with the details of the advantages of

[64] Ibid, nasihat, VII, ff. 70b-71a.
[65] Ibid.
[66] F.J. f., 73b.
[67] Ibid., f. 71b.

economic stability. He remarks that the prosperity and contentment of the subjects paving the way for stable government rests on the cheapness of the means of livelihood. It is an indispensible duty of the ruler to stabilize the prices of articles required by the army particularly weapons of war, horses and in general the prices of the commodities of common consumption. In so doing the ruler should employ his entire energy so that the task is accomplished satisfactorily[68] .

Barani discusses certain situations amidst which the ruler is rendered helpless to stabilise the prices on account of famine and drought, which he regards as heavenly calamities. But at least the ruler can reduce the strain by ordering a general reduction in the kharaj and jizya and also by offering royal help from the treasury. During the years of economic prosperity the ruler should be far sighted enough so as to cope with ugly situations. He should treat it as his foremost duty to order a general price control, strict vigilance over black-marketeering and hoarding of commodities of common use[69]. In his opinion the price of a commodity should be fixed on the basis of the cost of production. After all he was not a Marxist or a Leninist.[70] He enumerates the advantages of price control system as follows:-

1. The availability of the necessities of the army at low cost contributes to the strengthening of troops, who are the basis of kingship and the protectors of the subjects.
2. The cheapness of prices result in the migration of scholars and expert craftsmen to the imperial capital.
3. When a general state of economic contentment prevails in the realm the enemy does not entertain the desire to launch an attack upon it.
4. The cheapness of prices extends to the ruler's immortality and ensures peaceful conditions in the land.
5. It gives the ruler a well-filled treasury – for example when the prices soar high, the king has to spend lavishly on the maintenance of government. This leads to the exhaustion of the treasury finances but the peasants enjoy affluence.[71]

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[68] F.J. f. 91a.
[69] Ibid., f, 91b
[70] Ibid.
[71] Ibid, ff. 93a-94a.

6. By awarding punishments to extortionate dealers and regraters the king fulfils his obligation of rulership and dispensation of justice.
7. By reducing the prices of commodities of necessity the king performs his duty of safeguarding the rights of the poor against the rich.
8. Regrating and extortionate selling are social sins and their suppression is a public duty.
9. Regrating is the occupation of Hindus and the Magians and it is the craft of the infidels and polytheists. Plundering the property and enslaving the wives and children of Hindus and Magians is permitted by several Muslim sects. In reality it is the Hindus who plunder Muslims. Hence, the prohibition of regrating protects the rights of Muslims.
10. When prices are low, every group of people will devote itself to its hereditary occupation. But when prices soar high, the motive of profit-making will induce the soldiers to take to agriculture, peasants to trade and extortionate dealers to aspire for governorships and military command. This will lead to the creation of confusion in administration and government.[72]

Barani is particularly concerned with law and order and good administration, and since these issues are related with economic stability and equilibrium, he is laying considerable emphasis upon the governmental regard for price control. The memories of price control system introduced by Sultan Ala-ud-Din Khalaji and its tremendous success were alive in Barani's days. He simply could not ignore the validity of such a pertinent issue. This also explains why other medieval Muslim political theorists in general do not engage in similar discussions. Barani flourished amidst the cross currents of mighty agrarian and economic revolutions and the tinge of realism in his political and economic theories induced him to discuss such details. This portion of his dicta becomes increasingly important from the viewpoint of his reflection on the economic prosperity of the subject class, i.e. the Hindus in Delhi Sultanate commanding dominant economic positions and the multitude belonging to the Muslim ruling class living in economic penury. Although not by any means a socialist or a proletarian intellectual, Barani, certainly has firm

[72] F.J. ff, 94-96a

conviction that economic factors influence social and political events. He is also conscious about the existence of social sins and public duty and advocates the urgency of the prevention of social crimes more than individual sins.

State Laws

Three exhaustive are devoted by Barani to the question – what is law, its importance and role in social and political affairs. Other renowned writers on Mirrors for Princes hardly show interest in such crucial issues and this ultimately supports the thesis that the Fatawa-i-Jahandari ranks not only as a major extent work on political ideas of the Delhi Sultanate but deserves a highly respectable place in the long chain of similar works produced outside the boundaries of the Indo-Pakistan sub-continent.

The Term zabita employed by Barani as a synonym for law is defined by him as 'the pursuance of a course of action which the ruling authority imposes upon itself as an obligatory duty with a view to realizing the ends of government and from which he does not deviate ever'[73]. Law is an indispensable requirement of a State and government. In its absence social, political and economic umbalance captures the realm. Law aims at both immediate and ultimate good. It suppresses moral turpitude, social sins, political turmoil and economic chaos. Barani enumerates three kinds of laws – Law of the Shariah suiting all times and circumstances, customary law and man-made law. All the three kinds are essential for running the administration[74].In the Shariah governed ideal State the Law of the Quran and Sunnah stands supreme. But the secular State of the noble ruler of Khita, i.e., Qadr Khan was essentially based upon the customary and man-made law and it functioned smoothly. The Sharia law is revealed law and it exhibits the reason of the Supreme Being, who is infallible. For its interpretation the ruling authority should seek the assistance of the learned ulema. For day to day governmental business Barani feels the necessity of legislation by the power and urges the use of impartiality, honesty and wisdom in performing this duty. Law making is a very difficult task and the king must amke it obligatory upon himself to seek the

[73] F.J. Nasihats, V, XII and IXV. For definition of Zabita, see f. 157b.
[74] Ibid, ff. 159-161b

consultation of the intelligent and wise. Personal whim and fancy should be kept aloof from law and it should not be contradictory to Sharia, reason and public welfare. Like Plato and Farabi he strongly believes that law is the custodian of virtue and justice in human affairs. The State founded upon tyranny, fraud, service and individual caprice is tantamount to a tyrannical entity. In laws grounded upon virtue and reason Barani visualizes the stability and prosperity of government and administration[75]. Both Shariah governed as well as virtuous secular states are administered by laws. Barani quotes the ideal law prevalent in the Stat of Sultan Mahmud of Ghaznah and the rational rules of governmental administration enforced in the secular realm of Qadr Khan of Khita. Both kingdoms prospered on account of the efficiency of sound laws[76]. Barani entertains enormous aversion for lawless and dictatorial States. To hom a monarchy grounded on the principles of virtue, justice and noble descent is the final destiny of mankind. His ideal ruler is far from being a tyrant or a despot. He is the 'vicegerant of God Almighty' and is committed to the grave duty of the protection of religion and public welfare.

This concludes the summary of the major political doctrines of the Fatawa-i-Jahandari, a copious and valuable dicta on government and administration. The fundamentally realistic origin, form and colouring of the work have been projected at some considerable length. However, the theme of each Nasihat deserves more exhaustive treatment. Barani in his last few days of life felt the urgency of educating princes, governors and administrators in the science of 'government' and 'administration'. The very fact that the supremely valuable treatise had survived in a single manuscript copy, however, does not prove the unpopularity and rejection of the political ideas of the author. The curious form and the anonymous character of the work are the main factors accounting for its non-utilization and reference by the succeeding literati. It is indeed a mirror of past experience and key to sound administration. That political authority should be impartial, neutral and noble are the main doctrines developed in this book. Justice and benevolence are the obligations of ruling power. Politics and government are a means to an end and man

[75] F.J.
[76] Ibid.

has to account for his actions hereafter. If these basic principles of the Fata-i-Jahandari are incorporated in the modern constitutional systems of the developing States, surely they will be able to achieve political stability, economic viability and moral integrity.

Ruler and Justice

Ziauddin Barni has pointed out 20 qualities of Ruler or duties of a ruler for protecting the justice ,which are following;

1. Friendship with the exploitated, protection to the helpless, hatred towards perpetrators and enmity with exploiter, should stay in the heart of a Ruler.
2. Ruler should not be in the state of revenge when he is making justice even against enemy.
3. Ruler should not compromise where there is wrong, nor should he tolerate it and even should he go beyond his limitations.
4. His heart trembles when any innocent person be punished.
5. Ruler should not make any pressure in making justice.
6. During making justice,the ruler should not worry about his criticism and nor should he support the people.
7. For the fear of losing his life or empire, he should not disturb himself during making justice.
8. He should not deceive himself and nor should he make rule very soft.
9. Although, he becomes very rigid during solving others' problem,but he shoult not be soft during dealing with his personal affairs.
10. He should possess a strong army in order to dispense justice to the subjects.
11. He should escape from the thankful events so that it could not affect his justification during making justice.
12. Although, he wants justice, his heart is also kind and friendly.
13. His justifiable anger comes due to God but he does not have the animal and cruel behaviors.
14. He hates with his heart the Post of the super-commander or chief of Army because due to post he sometimes gives order against the life and respect of a Muslim.

15. He naturally hates fraud, lame excuse and conspiracy because in his heart, touchstone of wisdom is present which differentiates between truth and lie.
16. He has a desire to solve the problem of his subjects at moment only wherever he may be
17. The Subjects have love for such kind of ruler and by his order, anybody gets punishments, the subjects do not hurt and hate their ruler.
18. If he gets any information of injustice or illiteracy from East and West, his heart becomes worried.
19. His mind is always busy destroying the injustice and protecting the justice.
20. When he talks to peaceful mindded people, then his guidance proves the fact that his punishment should be based on the fact but when he deals with the cruel, sinful and Criminal people who are naturally addicted to wrong doings, then he should not worry at all in dealing with the criminals strictly.[77]

Special and Natural equality before Justice

Ziyauddin Barni also talks about the natural or special equality. The Special equality means in front of ruler, all petitioners and accused are equal because justice does not discriminate among the people. And Natural equality means the Ruler and Subjects equality. While giving justice to anybody,the ruler should not discriminate between common masses and relatives, blood relations, close persons, employed and unemployed, rich and poor, elite and common, friends and enemies, officials and civil people etc. He should not see their mother, father, son, children. He should not give importance to these relatives. Justice should come very naturally without any fear, any selfishness or anything.[78]

Laws in Pre-Mughal India

It has been the habit of many histororians to talk that Pre-Mughal India laws were based on the Quran, the Prophet precepts and qiyas (analogy) and Hadis that were

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[77] Ibid, 107-8.
[78] Ibid, p. 108-11.

called Shriat. But due to various reasons, the Monarch was not able to enforce these laws very well.They, therefore, went for compromise and moderations[79] and the state laws were called Zawabit.[80] If these laws violated the shariat, the principle of necessity or of istihsan (the public good) could be quoted in their favour. And the back of the shariat was broken for the primary reasons that it has provided no means for its own development. Barani told that Zawabit means, that it was such a law which was made for the development of the welfare for the state and it was the necessary duties of the king to protect from which he could not come back.[81] Barani also told that for the running of the administration of state, the Ruler and state need many rules which were made for contemporary needs which were also important for the development of the subjects and welfare for the state.[82]

However, Barani again made causations that these laws (Zawabit) should not violate the laws of Shariat or we can say Islamic laws. He advised the following things;

1. First conditions:- Zawabit should not break the Shariat order, nor should it make any interference in the religion, nor should it go towards the decline of religion.
2. Second conditions:,- State laws (Zawabit) should increase the respect of the good people, and common people get benefit from it, good people stay in the control under state and enemies should worry by seeing the Zawabit.
3. Third conditions:- Zawabit should mix with the laws of Islam or religion or give example from the Islamic laws. These laws (Zawabit) should give hard punishment to such regional kings who were doing against the state.
4. Fourth conditions:- Zawabit should not go against Sunna which is not fair.[83]

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[79] Mohammad Habib, Politics and Society during the Early Medieval period, collected works of Professor Mohammad Habid, Vol Two, (ed.,). K.A. Nizami, People's Publishing house, 1981, p. 311-313.
[80] Ziyauddin Barni, p, 126.
[81] Ibid, p, 127.
[82] Ibid, p, 128.
[83] Ibid, p, 126-9.

Barani further states that making Zawabit (laws) were very difficult Job. These laws were not capable of being implemented very easily when time and opportunities demanded. Therefore it is very important to note that these Zawabit maker should be very wise, experienced and having good knowledge about the laws.[84]

However, in Muslim jurisprudence, law was personal in its application to the Muslims, i.e. it was not affected by the constitution of a particular political society. According to Muslim theory, the authority of law was primarily based on man's conscience and not political force. The Muslim law was applicable to a Muslim inside and outside the Islamic state, because his conscience remains the same even when he was outside the jurisdiction of the Islamic state. Thus, according to the theory of Muslim jurisprudence, the Muslim law was not applicable to the non-believers. But the law in general had two parts, i.e., the religious and secular, and the non-believers living in the Islamic state, were subject to the secular portion of the law.[85] The secular portion of law was in substance common to all nations.

The extent of the application of the Islamic law in India during the Muslim rule was as follows:

1. a). Civil law: The purely personal law of Islam was applied to Muslim only, but secular portion of civil Law relating to trade, sale, contract etc. was made applicable to both the Muslims and the non-Muslims.[86]

2. b). Laws of Land: The system of taxation was adopted from the Arabs with modifications according to Indian conditions and was applied to both, i.e., Muslims and non-Muslims.

3. e). The Religious and Personal laws of non-Muslims: The Hindus and other non-Muslim subjects were governed by their respective religion and personal law. Cases involving points of personal law of Hindus were decided with the aid of learned Pandits and Brahmins mostly in their own Panchayats.

4. Criminal law: That portion of canon law which dealt with religious infringement was applied to Muslims only and for such offences non-Muslims were not held liable to punishment according to laws of Shariat.But that portion of Islamic

[84] Ibid, p. 129.
[85] A, Rahim, Mohammadan Jurisprudence, p. 59.
[86] Wahid Hussain, Administration of justice, P. 14.

criminal law which dealth with crimes believed by all nations was applied to Muslims and non-Muslims alike, e.g., the punishment for adultery, murder,theft, robbery, assault, etc. were the same for both.[87]

V. The Qanun-i-Shahi or the Edicts and Ordinance contained in the Farmans and Dasturul-amal for the guidance of the officers of the state. They were the common laws of the people of the country as opposed the canon law. These Qanuns were binding upon the judicial and executive officers and in compliance with the courts of common laws, were established in India. [88]

The Hindu law also assigned the duty of administering justice to the king. According to the Hindu idea of administration of justice, the king was the fountain-head of justice. From the early days of Hindu administration in India, the administration of justice was centralized. The monarch was alone the administrator of both law and justice. But the monarch was not above the law, on the contrary, he was subordinate to it. If he diverted form the accepted law of the land, he was liable to punishment like an ordinary citizen of the state.[89]

Therefore, it is clear now that law applied to the Muslims and non-Muslims of India during the Pre-Mughal period which controlled the social life and regulated the legal relations of the Indians (including Indian Muslims), consisted at least of three kinds of law- the Indian law i.e., the laws of the Hindus, the Buddhists , the Jains, the Muslims and the Municipality.[90]

Judicial system in Pre-Mughal Period Sultan

We have seen in 2nd chapter that in the Islamic world, the Khalifha was the head of all the judicial and administrative functions and whenever there was a Muslim ruler,the Khalifha was the head of all the Muslim rulers but in India, Khalifha was the head of administration in a theoretical sense or for getting legitimacy. He was not real

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[87] A. Rahim, Mohammadan Jurisprudence, p, 59.
[88] Wahid Hussain, Administration of justice, p, 15.
[89] U.N. Day, The Government al the sultanate, Munshiram Manoharlal publishers Pvt. Ltd. 1972 (First Published) reprint, 1993, p, 109.
[90] Wahid Hussain, administration Justice, p, 16.

ruler.[91] In pre-Mughal Period, the Sultan was the fountain head of justice or all administration. I. H. Qureshi points out that the Sultan as the chief enforcer of the law and head of the state exercised three functions which concerned the administration of justice in several respects. He was the defender of the faith and the arbitrator in the disputes of his subjects: he was the head of the bureaucracy; he was the commander-in-chief of the forces. In his first capacity, he dispensed justice through the diwan-i-qada; in his second capacity, through the diwan-i-mazalim; while he himself or his military commanders sat as a court martial to try rebels, though it was considered necessary to obtain a ruling from qualified lawyers. Muhammad-bin-Tughluq, who probably had more men executed than all the other sultans of Delhi put together, had to organize a separate department called diwan-i-siyasat, for the further cases were large, special jurists had to be employed for it . It was significant that even he did not condemn a man to death until he had overcome the jurists with his arguments.[92] U.N. Day also points out that the judicial system of the Sultans was a simple one. The ecclesiastical cases were separated from the civil and criminal cases. The highest court of appeal in civil and criminal cases was that of the Sultan himself. The sultan could try cases singly both as an Original and Appellate to judge. He was assisted by two Muftis in the application of the law.[93]

Sadre Jahan Qazi-ul-Quzat, Qazi

In the Islamic world the Qazi-ul-Quzat or chief judge of Judiciary played an important role as I have pointed out his main functions in the second chapter. The important thing is that this Islamic office has been brought to India. In India his function was more or less the same as it was in the Islamic country. But Barani points out that after the creation of Sadre Jahan in A.D. 1248, the Qazi-ul-Quzat lost the highest position and Sadre Jahan became the head of the Judiciary. In the absence of the king, he tried original cases on his behalf.

[91] The view endorse by Several Historians like, Richard Eton, Harbans Mukhia, Muzzafar Alam, Jafri, Wahid Hussain, Prof. I. H. Qureshi, U.N. Day, Irfan Habib and so many that Kalipha was the theoretical head of Delhi-Sultanate but for all political, legal religions or all administration, the Sultan was the head.
[92] Ishtiaq Hussain Qureshi, The administration of the sultanate of Delhi, Munishram Manohar Ram, Delhi. 1971, p. 157-8.
[93] U.N. Day, The Government of the sultanate, p, 112.

The Sadre Jahan also selected the Qazis. The chief aim of the creation of this office was to supervise the ecclesiastic side and therefore most of the work of the judiciary was done by the Qazi-ul-Quzat. Naturally this arrangement created complications. Alauddin Solved the problem by amalgamating the office of the Sadre Jahan and Qazi-ul-Quzat in one person by appointing Qazi Sadruddin Arif to both the posts. However, under Firuz Shah Tughlaq the posts were again separated.

The Sadre Jahan supervised the working of the Educational Institutions, the law officers and the grant of Waqfs and Inams and Stipends to learned men and the poor. We also find that funds colleted from the Zakat and Sudqah taxes were disbursed under his supervision. The Sadars of the provinces were also under him.[94]

However, even after the creation of Sadre Jahan, most of the work of Judiciary was performed by Qazi-ul-quzat. In fact he was the real chief justice of the empire.

The important officer, attached to the judiciary system were Muftis, Muhtasib who also played an important role.

Mufti was the legal adviser, legal assessor and functionary of the law. Bashir Ahmed points out that "The mufti of the Chief Justice's court was lawyer of eminence. He was, in theory, appointed by the Sultan but candidates for this office were selected by him and in case of difference, reference was made to sultan".[95]

"In Civil cases, arising out of the personal Law of the non-Muslims which came before the court, the law was explained by a Brahmin lawyer, called, Pandit. The status of the Pandit was the same as that of the Mufti".[96]

Muhtasib was like the chief of the police and looked into the moral conduct of the people in the public.[97]

The Judiciary of the province consisted of four kinds of courts. They were:

i) The governor's court.
ii) The court of the Qazi-i-Subah.
iii) The Diwan-i-Subah court.
iv) The court of Sadre-Subah.[98]

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94 Ibid, p, 113.
95 Bashiv Ahmad, The administration of justice in Medieval India, Aligarh, 1941, p. 115.
96 Ibid, p. 115.
97 U.N. Day op. cit, p. 116.

The Governor of Subah was the representative of the Sultan and highest official of the Province. He was a court by himself. Next to the governor in matter of justice, was the Qazi-i-Subah. The Qazi-i-Subah had to bear most of the burden of judiciary.

He had jurisdiction over civil and criminal cases and could hear appeals from courts of Pargana's Qazis. But the Qazi-i-Subha had no jurisdiction over revenue cases which was left entirely to the provincial Diwan.

The important officers attached to the provincial courts were the Mufti, Muhtasib, Pandit and Dadbak.[99]

The judiciary in the Subdivision of a province was a simple machinery. It consisted of the Qazi, the Faujdar, the Amil, the Dadbak, the Kotwal and the village Panchayat. The Qazi in the pargana and in the Shiq were appointed by the Sadre Jahan on the recommendation of the Qazi-i-Subah. The Qazi in the Pargana decided civil and criminal cases and even attended the cases involving canon law. In the Shiq he heard appeals from the court of lower Qazis, Kotwals and village Panchayat but in the paragama he had no jurisdiction to hear appeals from the courts of village Panchayats and kotwals.

The Faujdar of the Paragana attended to petty criminal cases and was generally appointed by the provincial governor. His main duties were executive and maintenance of peace and order in the Pargana.[100]

The Amil decided revenue cases and was a counterpart of the Diwan-i-Subah. Appeals against his judgment were filed with the Diwan-i-Subah.

The Kotwal looked after the security in towns and decided petty criminal cases which were in the nature of those punishable under the municipal laws. The village Panchayats were the lowest courts in the judiciary of the sultanate but performed the most Valuable service to the rural life.[101]

Attitude of Sultans Towards Justice, Crime, Punishment

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[98] Bashir Ahmed, op. cit, p. 116.
[99] Ibid, p. 118-19.
[100] U.N. Day. Op. cit, p. 116.
[101] Ibid, p. 117.

Attitude of Sultans towards justice was different from each other. Their treatment to justice was based on Indian laws, Muslim laws and more important their own consciousness and judgment. The primary source also talks about their treatment to justice differently.

About good justice of Balban, Muhammed Kasim Ferishta has given several stories which are following;

"As an instance of his inflexible justice, it is related to the Mallik Feiz Shirwani, the son of the keeper of that royal wardrobe, an officer rank, who maintained a guard of 1000 horsemen, and was governor of the province of Budaoon, put to death one of his personal dependents, with his own hand, while in a state of drunkness. After some time, Ghiyasud-Deen Bulban happened to go in person to Budoom, when the widow of the deceased came to complain of the injury. The governor, Mallik Feiz, was sent for, and tried and was beaten to death in the presence of the whole court, after which his body was hung over the gate of town. Another instance is also mentioned of one Hybut Khan, an officer of the household troops, who held the government of Oude, who also put a person to death while in a state of intoxication. On the complaint coming before the king, and the fact being proud, the governor received a public whipping of 500 lashes, and was given over as a slave to the widow of the deceased; nor did he procure his release till he had paid 20,000 silver tunkas for his ransom, after which he kept his house and soon died. Ghiyasud-Deen used to tell his children, that Shums-ood-Deen Iltutmish said, in his presence, that he heard Syed Moobarak Ghizny twice repeated to Mohamed Ghorry, that kings were too apt to conduct themselves as if they were gods upon earth, contrary to the ordinances of prophets and of religion; but this holy man, a king can only be saved from perdition by the exercise of four duties, and if there be a deficiency in any one of them, no mortal will be subject to more rigid security, or meet with less mercy on the day of judgment. These duties are;

1st, To assume dignity, and exercise power at proper seasons, and allow nothing to induce him to forget the majesty of God, or the happiness of his subjects.

2ndly, Not to Permit immorality and indecency to be openly practised within his realm, without imposing heavy fines, or some other punishment.

3rdly, to make selections from men of character for the offices of government, and not to permit men of notoriously vicious habits to find an asylum within his realm.

4thly, To be Patient and just in the administration of justice.

"These are the rules" said this Prince, "Which I have adopted for my own conduct;

They are those on which I hope my successor will also act; and I warn you, that, although you are my own children, you will meet with no consideration on that account, if you infringe the laws of the Empire".[102]

However, Balban gave capital punishment in the cases of rebellion or insurrection. His thought was that because of soft punishment, rebellions had become fearless. It was important for the king's mandate for the every military expedition.[103]

Regarding administration of justice and administration, he advised his Mahmood in the following words;

"When you shall ascend the throne" said he, "Consider yourself as the deputy of God. Have a just sense of the importance of your charge. Permit not any meanness of behaviour in yourself to sully the lustre of your station, nor let avaricious and low minded men share your esteem, or bear any part in your administration.

"Let your passions be governed by reason, and beware of giving way to anger. Anger is dangerous for all men, but in kings it is the instrument of death."

"Let the public treasure be expended in the service of the state with that prudent economy, yet benevolent liberality, which reason will dictate to a mind like yours, even intention doing good.

"Let the worship of God be inculcated by your example and never permit vice and infidelity to go unpunished".

"Be ever attentive to the business of the state, that you may avoid being imposed on by designing ministers, make it your duty to see that they execute your commands without the least deviation or neglect, for it is through them you must govern your people".

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[102] Mohammed Kasim Ferishta, History of the Rise of the Mahommed an Power in India, translated by John Briggs, set of 4 vols, bound in 2, vols, low price publications, Delhi, First Published 1829, reprint, 2006, vol. T, p. 140-41.

[103] Ibid, p.141.

"Let your Judges and magistrates be men of capacity, religion, and virtue, that the light of justice may illuminate your realms".

"Let no levity on your part, either in public or private, detract from that important majesty which exalts the character of a king; and let every thing around you be so regulated as to inspire that reverence and awe which will render your person sacred, and contribute to enforce respect to your commands".

"Spare no pains to discover men of genius, learning, and courage. You must cherish them by kindness and munificence, that they may prove the soul of your councils, and the instruments of your authority".

"Throw not down a great man to the ground for small crime, nor yet entirely overlook his offence. Raise not a low man too hastily to a high station, lest he should forget himself, and be an eye-sore to men of superior merit".

"Never attempt any thing, unless through necessity, but what you are sure to accomplish; and having once determined upon a measure, let your Perseverance be never shaken, nor your mind be over averted from the object. For it is better for a king to be obstinate, than pusillanimous and vacillating; as in the first case he may chance to be right, in the latter he is sure to be wrong. Nothing more certainly indicates the weakness of a prince than a wavering mind".[104]

This is Balban's thought about justice and administration.

Ferishtat talks about the Jalaluddin Firuz and Khilis' justice and softness He says – "Jalal-ood-Deen Feroz Khilji was celebrated during his reign for many amiable qualities and particularly for his mercy and benevolence. He hardly over punished a fault among his dependents, and was never known to lay violent hands on the property of his wealthy subjects, as is too often the case with despotic monarchs. He was in the habit of associating familiarly ever after his access, with his former acquaintances, and joining their parties, and drinking wine in moderation with them the same as before".[105]

Regarding the Allaudin-khalji's justice, Ferishta has documented good conversation between Qazi Mughisud-din and Sultan. I am just quoting their conversation;

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[104] Ibid, p. 148-51.
[105] Ibid, p. 169.

"First Question, "From what description of Hindoos it is lawful to exact obedience and tributes,"

Answer -, "It is lawful to exact obedience and tribute from all infidels, and they can only be considered as obedient who pay the poll-tax and tribute without demur, even should it be obtained by force; for according to the law of the prophet, it is written, regarding infidels, (Tax them to the extent that they can pay, or utterly destroy them, , 'To slay them to the faith; a maxim conveyed in the words of the prophet himself. The Imam Haneefa, however subsequently considers that the poll - tax or as heavy a tribute imposed upon them as they can bear, may be substituted for death, and he has accordingly forbidden that heir blood should be heedlessly spilt. So that it is commanded that the Tazya and Khiraj should be exacted to the uttermost for thing from them, in order that the punishment may approximate as heavy as possible to death the king smiled and said, "You may perceive that without reading learned books, I am in the habit of putting in practice, of my own accord which has been enjoined by the prophet".

2nd Question, "Is it lawful to punish public servants who may be guilty of taking bribes, or of defrauding the government, in the same manner as if they had committed theft and were actually thieves?

Answer:- "If a public servant is handsomely paid, according to the responsibility and labour imposed on him and he is then guilty of receiving brides, or of extorting money by force form those with whom he has business, it is lawful to recover the same from him by any means which the government may think fit; but it is unlawful to deprive him of life or limb like a common malefactor".

The king replied, "In this particular, also, I have acted in conformity with the law; for I make a point of exacting, even by rack and tarture all such sums as one proved to have been fraudulently obtained by the public servants:-

Third Question – "Am I entitled to retain 195 private properties, the wealth I obtained during my campaign against Dewgur, before I ascended the throne, or ought it to be placed in the public treasury; and has the army any right to a portion of that booty?

Answer:- "The portion of the king, in that booty, is only one share in common with every soldier who accompanied him on the expedition.

The king was displeased at this reply; and said, "How can that be considered public property, or belonging to the troops, which I obtained during the time I was general and which was gained through my own personal exertions?"

The Qazi replied, "Whatever the king may have obtained by his individual exertion belongs to him; but whatever is obtained by the exertion of the troops, should be equally shared with them".

Fourth Question "What portion of above property does belong, to me individually, and to my children?"

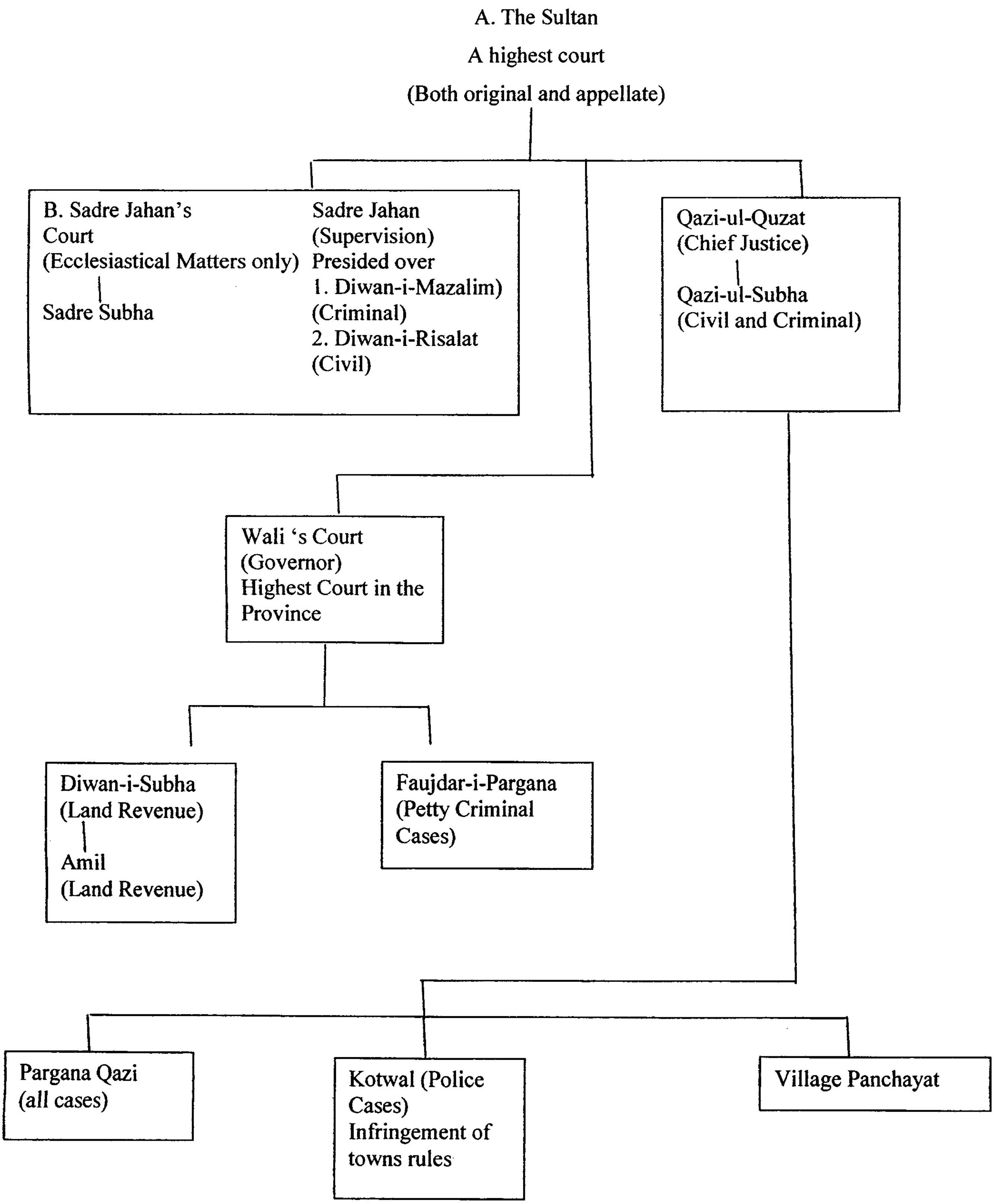
The Qazi said that "My fate is certainly determined.[106]

In one question, king replied which is very important. The king said that "I always make it a rule ...[107]

However, Ferihsta also documented several stories regarding the Mohammad-bin-Tublaq who was also very similar to Allaudin Khaliji. He also made his own rule and gave justice on his own consciousness.[108]

[106] Ibid, p. 199.
[107] Ibid, p, 200.
[108] Ibid, p.252.

NETWORK OF LAW COURTS UNDER THE SURTANATE OF DELHI



Chapter-4rth

Judicial system in Mughal India

=The Mughals played a very significant role in the judiciary system in India. They brought new changes in judiciary system and gave a great impact on judiciary system in India.1Wahed Husain points out that judicial system of Mughal India has full influence in the present judiciary system in India with some changes. He quotes J.N Sarkar by referring that "Thus the Mughal System at one time spread over practically all the civilized and organized parts of India."2 He further evaluates and points out the general features of the Mughal Administration which is following;

First, a strong and well –organized Government contributing to peace and order,

Secondly, a highly centralized form of government with an extensive administrative machinery,

Thirdly, an age of Renaissance in Art and literature,

Fourthly, An empire of unity in which different racial elements were more or less reconciled and contributed their skill, ability and wisdom to make the government prosperous.3 However Wahed Husain's characterization of the Mughal period can be contested .4

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[1] Husain,Wahed, B.L ,Administration of Justice during the Muslim rule in India with a History of the origin of the Islamic Legal Institutions,published by idarahi-i-adabiyat-i-Delhi,first print 1934,second reprint1977,Delhi,pp-103-106.

[2] Ibid,p,106.

[3] Ibid,p,30.

[4] Wahed Husain four points are not convince the current historians .His first point is that Mughal government is committed for "the peace and unity" is questionable due long fight within the family as well out side the territory .There was never unity in the caste structure and women position is very weak in the society .There was no unity at the social label .Even politically India was not united at the various places. His second point is that "government was highly centralized and with an extensive administrative machinery" which is also questionable by recent historians like Mudhu kahnna,Muzaffar Alam.They argue that government was not highly centralized because of the several kind of revolts by the nobles and regional subedars.His third points is more or less valid .His fourth points is "Empire of unity in which different racial elements were more or less reconciled and contributed their skill ,ability and wisdom to make the government prosperous." Questionable due to many new notions.The nobles see their own benefit and see their own prosperous. This is highlighted by many historians like Irfan Habib in "Agrarian sysem of Mughal India" whre he discus that the economic exploitative structure of the Mughal India which led several revols like Jat Revolt, Satnami revolt and others revolts.Muzaffar alam also points out that Madd- masa grant led a great revolt in the North India Awadh and Punjab.

Ibn Hasan or ,a noted historian of Mughal India ,points out that the duties of a Muslim King5 in an Islamic State6 require him to rule in accordance with the Quranic law and to enforce Shariah in his kingdom .He says that under Muslim king the subjects were divided into two sections,belivers and non believers, and was imposed a duty upon the King to see that believers lived as true Muslims and non believers remained in the position allotted to them as Zimmis, a position which denied them equal status with Muslim subjects but guarantees security of life and property and the continuance of their religion and religious practices under certain defined conditions.7 Therefore a Muslim king besides performing the ordinary duties connected with his office,had also to uphold the dignity of his religion through defined channels and to rule according to Islamic law.[8] The second aspect of the Islamic system which guarantees peace and security of life and prosperity to non-believers includes impartial justice, and this aspect of kingship was emphasized byu Balban as well as by Bughra khan.[9] It was emphasized by Muslim jurist ,and in matters of justice they treated both sections of subjects as equal in the law's eye . "Justice and Beneficence must be exercised alike for all subjects .The king is the shadow of God and gift of divine mercy is common to both believers and non-believers .A king must curtail the hand of oppressor upon the weak because the prophet says , 'the cry of a victim of injustice even if he be a kafir is never rejected by God'[10]

U.N. Day , a noted historian on Mughal government viewed the exposition of the muslim jurists involved three aspects:

First, that the primary duty of the monarch was to administer justice;

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[5] 'Muslim King' is a contested word particularly in India because if you want to call a king by seeing his religion that means the other king belonging to other religion like Hindu or Christian ,then you have to call Hindu king .For instance in Ancient India we call Harsavasdhan king ,Ashok .If one go through the argument of ibn Hasan then all the ancient or south Indian kings are the kings of hindu king.Therefore word muslim king is a word of prejudice.this is a big prejudice.

[6] The "Islamic State" is a also conteste in India particularly.This is a recent debate that mughal state was an Islamic or not.The conventional Historians like JN Sarkar,R.P.Tripathi ,KS.lal atands on the points that Mughal state was an Islamic or theocratic state.The recent Historians points out that Mughal state was njot an theocratic state by referring many unislamic incidents.Harbans Mukhia points out that Jahangir was habituial to take pork in the month of ramzan.Many ruler does not follow the Quranic verses.Wine is also fprbited in the islam but all Mughal ruler have take wine.Thse all facts shows that Mughal state was not an Islamic state.

[7] Hasan,Ibn,The central Structure of the Mughal Empire and its practical Working up to the year 1657,Munshiram Manoharlal,New Delhi,New Delhi,first published in 1936,reprinted in 1970,p,306.

[8] Ibid,p,306.

[9] Ibid,p,307.

[10] Ibid,p,308.

Second, that the law that was to be administered was to be based on the Shariat that is the Islamic law ;

Third, that the judicial system could comprehend only the believers as the people or subjects with which the state was concerned. [11]

Judicial Orgnisations in Mughal India.

The organization of the judicial system of the Mughals was entirely the same as laid down by Muslim jurists and established in northern India by the sultans of Delhi.[12]Many institutions were same as it was in the Delhi Sultanate. For instance the sultan was the fountain pen of judiciary system. He was all in all in the state .He was responsible for any kind of error in the state. The second agency of judiciary was the Qazi. Qazi had a bigger role in the judiciary system in the state and he held the court and gave justice. The officials of the judiciary system were the same but the time and territory and nature of the Emperor were changed. Emperor like Akbar has come who changed many things in the system of the judiciary in his reign.

Emperor: Supreme agency of judicial Administration

However, in Mughal India, **the King** was the supreme in providing the justice in the state. Though the Muslim Jurists differ as to the right of the king to administer justice without a Qazi, they agreed that a king had a right to administer justice personally. But as the administration of justice according to the law required a technical Knowledge of the subjects, it was his duty to appoint one of the best Ulema of the age to this post. The office thus becoming unavoidable, they also suggest that there should be a body of Ulema capable of giving fatwa on legal points, and the most capable of them should be selected for the office of the chief quiz.[13]

It is by no means to be admitted that the king was above the Holy Law. The king, though by no mean, is below God and His Law as revealed to the Prophert. Every Mughal king regarded himself as the viccgerent of God and pretended to carry out the

[11] Day ,U.N, The Mughal Government,A.D.1556-1707,Munshiram Manoharlal,New Delhi,first published,1970,p,203.

[12] Hasan,Ibn,The central Structure of the Mughal Empire and its practical Working up to the year 1657,Munshiram Manoharlal,New Delhi,New Delhi,first published in 1936,reprinted in 1970,p310.

[13] Ibid,p,311.

Divine Law. Obedience was demanded as his due by God's ordinance, and all resistance was treated as sinful. Though in practice his power was incapable of legal limitation, in theory he was expected to observe the limits set by the Holy Law. "State" Law was a command of the sovereign and was binding on all. Consequently very few digests or codes of laws existed in Mughal India. The place of laws taken by these regulations was proclaimed only by the Emperor's orders. The Twelve Ordinances of Jahangir and the Fata-i-Alamgiri were the work of the monarchs themselves. The jurisdiction of the Emperor which was all-embracing rendered his position still stronger. According to the Sacred Law, God has delegated the right of Legislation and rule to human beings. The Sacred law recognized no power of positive legislation vested in the head of the state, since God, through the Prophet had legislated once for all; still whenever in practical politics the necessity for enacting new ordinances was felt, the king had the fullest power to make laws. But there was no standard code which might be universally adopted in the country. Aurangzeb tried to remedy this defect by ordering Fatawa-i-Alamgiri to be compiled.

The king should appoint the one with whom he was personally acquainted and who in his opinion, was the best available person for the office .If the candidate was not personally known to him ,his knowledge and learning should be tested by a body of the learned ,and his conduct inquired from his neighbors.[14]

The king offered the post. The king has right to depose a qazi, because the one who had a right to appoint him possesses also the power to depose him. A certain group of Muslim Jurists favors the appointment of a qazi for limited period only, and some appeared to regard one year at a time as sufficient for him so that he might not neglect his studies of the subject.[15]

The King had right to appoint a separate qazi for the army (qazi-i-askar), but his jurisdiction was limited to the area defined for him. The king had right to appoint more than one qazi in a city, but in that case their work must be defined.[16]

[14] Ibid,p,311.
[15] Ibid,p,311.
[16] Ibid,p,312.

The king was also expected to have practical knowledge of law. Because being a monarch his word is enough to provide justice to particular individual or group people. He can take life or give life. His decision may cause great harm or benefit to the empire. His justice may give a long benefit to the empire. There is no check on his decision .He might apologise but cannot return the life.

It has been mentioned earlier that there were no written laws in the country. The Emperor was the foundation of justice and his system of government was extremely personal. He exercised rigid control over every department of administration. The sovereign's will was absolute. So long as the laws of the share remained inviolated, his will could not be resisted. But any attempt to defy the laws of the shariah resulted in discontent. The King had full powers to issue ordinances and the Islamic Law entrusted to him the function of administration and justice.[17]

Abu- Fazal Allami, a famous noted historian in the court of Akbar,wrote in A-in-i -akbari about the idea of Akbar of justice and what a king should do for justice.

"There are three causes of aberrant Judgment,viz--.,incapacity of mind; the society of enemies in the guise of friends; the duplicity of friends that seek their own interest"[18]

"If I were guilty of an unjust act, I would rise in judgment against myself. What shall I say, then, of my sons, my kindred and others?" [19]

"The authority to kill should be his who can give life, and he who performs this duty at the command of right judgment, does so with reference to God. When an inheritance passes, while a daughter is alive, to the brother's child, it having been transmitted to the deceased from his father, there is justification, otherwise how can it be equitable?"[20]

"A monarch is a pre-eminent cause of good. Upon his conduct depends the efficiency of any couse of action His gratitude to his lord, therefore, should be shown in just government and due recognition of merit; that of his people, in obedience and praise."[21]

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[17] Mughal kingship and Nobility by R.P. Khosla pp. 22-24.,

[18] Allami,Abu Fazal,the A-in-I Akbari ,vol II-III, ,translated by Colonel H.S.Jarrett,first published 1927 and reprinted in LPP 1989,1994,1997,2001,2006, Low price publications,2006,New Delhi,p,433.

[19] Ibid,p,434.

[20] Ibid,p,443.

[21] Ibid,p,449-450.

"The very sight of kings has been held to be a part of divine worship. They have been styled conventionally the shadow of God, and indeed to behold them is a means of calling to mind the creator, and suggests the protection of the Almighty" [22]

"What is said of monarchs ,that their coming brings security and peace, has the stamp of truth>When minerals and vegetables have their peculiar virtues, what wonder if the actions of a specially chosen man should operate for the security of his fellows."[23]

"In the reciprocity of rule and obedience, the sanctions of hope and fear are necessary to the well-ordering of temporal government and the illumination of the interior recesses of the spirit; nevertheless a masterful will, never suffering the loss of self control under the dominance of passion ,should weight well and wisely the measure and occasion of each."[24]

"Whoever walks in the way of fear and hope, his temporal and spiritual affairs will prosper. Neglect of them will result in misfortune.'[25]

"Tyranny is unlawful in everyone, especially in a sovereign who is the guardian of the world"[26]

"Divine Worship in monarchs consists in their justice and good administration: the adoration of the elect is expressed in their mortification of body and spirit. All strife is caused by this, that men neglecting the necessities of their state occupy themselves with extraneous concerns."[27]

"A king should abstain from four things: excessive devotion to hunting; incessant play; inebriety night and day; and constant intercourse with women"[28]

"Falsehood is improper in all men, and most unseemly in monarchs .This order is termed the shadow of God, and a shadow should throw straight."[29]

"Superintendents should be watchful to see that no one from covetousness abandons his own profession"[30]

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[22] Ibid,p,450.
[23] Ibid,p,450.
[24] Ibid,p,450.
[25]Ibid,p451.
[26] Ibid,451.
[27] Ibid,451.
[28] Ibid,p,451.
[29] Ibid,p,451.
[30] Ibid,p,451.

"A king should not be familiar in mirth and amusement with his courtiers."[31]

"A monarch should be ever intent on conquest; otherwise his neighbors rise in arms against him. The army should be exercised in warfare, lest from want of training they might become self-indulgent."[32]

"A king should make a distinction in his watch over the goods, the lives, the honour and the religion of his subjects. If those who are led away by greed and passion will not be reclaimed by admonition, they must be chastised."[33]

"He who does not speak of monarchs for their virtues will assuredly fall to reproof or scandal in their regard."[34]

"The words of kings resemble peals. They are not fit pendants to every ear.[35]

Qazi: Second agency of the judicial administration.

The second agency of the judicial administration of Mughal India was "Qazi".

A Qazi is the term for a Muslim judge who issued definitive rulings in cases brought by disputants for resolution.The word Qazi is derived from the root word Q-D-y ,meaning "to resolve," "to settle," "to decide." [36]

Judicial practice was seen as an extension of the function of the ruler and was thus indirectly linked to orderly governance Muslim political theory advocates the appointment of an executive ruler (khalipha/Imam) as a moral obligation premised on religious authority .The appointment of judges was thus in keeping with the fulfillment of an obligation according to the classical Sunni Legal authorities. Early Shiite authorities argued that the implementation of the rules of the reveled law was an obligation not subject to rational scrutiny and could only be fulfilled by the designated hereditary religious leader (Imam) or his delegated appointee. Only those Judges appointed by the legitimate political leader could be deemed to have worthy credentials as appointees to the office of Judgeship.[37]

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[31] Ibid,p,451.
[32] Ibid,p,451.
[33] Ibid,p451.
[34] Ibid,p,451.
[35] Ibid,p,451.
[36] Martin,C,Richard,Encyclopedia of Islam and the Muslim World,vol 2,Thomson and Gale,America,2004,p,557.
[37] Ibid,p,558.

Abul Fazl has given detail about the Qazi and Mir-i -adl role, power, duties and section. Abul Fazl wrote in the Ain – Akbari which is following;

"Although the supreme authority and the redress of grievances rest with sovereign monarchs, yet the capacity of a single person is inadequate to the superintendence of the entire administration. It is therefore necessary that he should appoint one of his discreet and unbiased servants as his judiciary delegate. This person must not be content with witnesses and oaths, but hold diligent investigation of the first importance, for the inquirer is uninformed and the two litigants are cognizant of the facts. Without full inquiry, and just insight, it is difficult to acquire requisite certitude. From the excessive depravity of human nature and its covetousness, no dependence can be placed on a witness or his oath. By impartiality and knowledge of character, he should distinguish the oppressed from the oppressor and boldly and equitably take action on his conclusions. He must begin with a thorough interrogation and learn the circumstances of the case; and should keep in view what is fitting in each particular and take the question in detail, and in this manner set down separately the evidence of each witness. When he has accomplished his task with intelligence, deliberation and perspicacity, he should for a time, turn to other business and keep his counsel from others. He should then take up the case and reinvestigate and inquire into it anew, and with discrimination and singleness of view search it to its core. If capacity and vigour are not to be found united, he should appoint two persons, one to investigate whom they call a Qazi,[38] the other the Mir A'dl to carry out his finding." [39]

Qulification of Qazi

The following rules were made for appointing the Qazi;

1. Adult Male: According to Hanfi Law a woman could be appointed as a Qazi ,but the Mughal emperors confined the jurisdiction of woman Qazis to the Harem only.
2. Intelligent and sound man who can deliver justice without discrimination.
3. A free man.

[38] Qazi in Sarkar's Mughal Administration, Ch. II, S.

[39] Allami,Abu Fazal,the A-in-I Akbari ,vol II-III, ,translated by Colonel H.S.Jarrett,first published 1927 and reprinted in LPP 1989,1994,1997,2001,2006, Low price publications,2006,New Delhi,p,42-43.

4. A Muslim; Non Muslims could not be appointed Qazis .For a Qazi strict adherence to Islamic Law even in private life was deemed necessary for the acceptance of office entailed upon the encumbents a detailed study of religious laws and sometimes of the duty of leading the Friday prayers is necessary.He must according to law be a Muslim scholar of blameless life.
5. He must be capable of being a trustworthy witness.Special heed was to be paid to qazi's character and a high standard of conduct was expected of him.
6. He must be of sound hearing and sight, because no judement of a Qazi was regarded as valid if it was given at a time when his understanding was not clear.[40]

Powers of Qazi

The powers and functions of Qazis were wide and their responsibilities grave. The order of the Qazis court had to be obeyed. Theoretically it was asserted that even the King had no right to interfere in the judicial powers of the Qazi. If the King ordered him not to proceed to take evidence in a particular case, or asked him to postpone a case till he returned to the capital from his journey, the order was considered as neither valid nor binding upon the Qazi. Similarly if a case had been tried and the judgment passed by the Qazi in accordance with the law and it was just and the King ordered him to open the case again the order was not deemed as valid.

However such a theoretical position certainly could not have worked under the Mughal emperors when the appointment, promotion, and removal of the Qazi rested with the Emperor. We know that Abdul Wahhb was made Qazi-ul-Quzat by Aurangzeb because he was the only one who declared that Aurangzeb's occupation of the throne was perfectly in accordance with the Shariat because Shah Jahan then was physically unfit.[41]

DUTIES OF A QAZI

[40] Day ,U.N,the Mughal government ,A.D.1556-1707,Munshi ram monohar lal,New Delhi,p213-214.
[41] Ibid,p,214.

A Qazi on his appointment, is enjoined to take possession of all the records, etc., appertaining to his office and to demand the 'diwan' (the bag containing the records and other papers) of the former Qazi. He should take over charge of all these papers through his amins, and the latter should ask the retiring Qazi for separate files of different subjects, such as property, orphans, marriage, and inheritance. The new Qazi must also enquire into the state of the prisoners confined on any legal claim..... And reinvestigate the cases and act accordingly.

The Qazi must hold his court in the mosque or in his own house. Save from relations, he should not accept any presents or feasts. He should behave with equal courtesy towards both parties in a case and never show more regard for either, even by smiling. Nor should he help the witnesses. Before going to the court he should prepare himself so as to maintain a calm and dispassionate attitude during business.

The Qazi's office included the following functions :- (1) To try and decide cases, (2) to execute judgments, (3) to appoint guardians for those incapable of dealing with their property, e.g., lunatics, minors, (a sort of court of wards), (4) supervise and manage waqf property, (5) execution of wills, (6) charge of the remarriage of widows, (7) execution of punishments prescribed by religious laws, (8) the supervision of streets and buildings, so that no one might disfigure the streets and open spaces by erecting projecting roofs or unauthorized buildings .

(9) supervision of law officers, such a notary (Shuhud) secretaries and the sub-judges whom he could appoint as well as remove, (10) where no collector of poor-tax (sadqah) was appointed it fell to the lot of the Qazi to collect this tax also .

Mufti

Mufti was not a regular official. "He was a sort of unofficial legal referee recognized by the public opinion... In reality the mufit was a sort of unofficial legal remembrancer of canon law... Anyone who has by common agreement ranked among the learned, recognized to be an authority on religious law was called a mufti. His assistance was

sought in all cases coming within the pale of religion, on which the law was not clear to the judges of the court, and the muftis were called upon to give a fatwa, that is to say, a decree in accordance with the law, on all questions of social and religious life of the Muslims and even of the non-Muslims if they behaved in manner prejudicial to the Law, as expounded by the great jurists..we can quote a number of instances muftis were clearly non- official jurisconsults. "1

However, Bashir Ahmad, on the basis of collection of Farmans holds that Mufti wa appointed by a Royal Sanad, and that sometimes the Mufti of a parganah wa also appointed Mohtasib in addition to his own duties. He as a lawyer attached to the court in order to expound the law, but not to give judgement. The Mufti were enjoined to copy out precedents to read and to place them before the Qazis. The Qazi, had the authority to give the judgement which the Mufti did not possess, but the opinion given by the Mufti on a law point could not be ignored by the Qazi and in case of difference of opinion reference to a higher court was necessary.

Mir Adl

It is commonly accepted that the structure of judiciary as it developed under the Caliphs was adopted by the Sultans in India and continued under the Mughals. But here and there we come accross with officials which are not to be found under the Caliphate. The office of Mir Adl is one such case.We hear of this office for the first time in the reign of Sikanddar Lodi, and are informed that Sikandar Lodi raised the status of dadbak by granting them powers to try common law cases adn calledthem Mir Adl. Under Sher Shah too we find Qazis and Mir Adls presiding over courts. Under the Mughals, Abul Fazl speaking of the Qazi and Mir Adl says he should appoint tow, one to investigate whom they call qazi the other Mir Adl to carry out his findings" [42]. Dr. Beni Prasad says that "every town, generally evern a very small town, had a Qazi and a Mir Adl who formed a judicial bench. The former investigeted the case while the laltter pronounced the sentence. Sometimes the tow offices were combined in the same person. " [43] Dr. Saksena

[42] Ain-I akbari, vol,2,p,43.
[43] Beni Prasad,Jahangir,p,96.

opines that in the reign of Shahjahan "the tow posts of Qazi and Mir Adl were ordinarily combined."[44]

Mr. Bashir Ahmad opines that 'Mir Adl possessed no judicial powers such as those of a Qazi, His duties were analogous to those of a Mufti who gave his opinion on a point of law and Mir Adl submitted report on the fact and the case was made over to him by the Qazi, after the judgement was delivered for superintendence of proceedings in execution. He was in fact a superior clerk of the Court."4 The position seems to have continued even during the reign of Aurangzeb and there is no clear evidence to indicate that Mir Adl exercised judicial powers as independent court.

The office of Mir Adl, however, was not common in all the provinces, at least Bengal and Gujarat had no Mir Adl in their judicial set up.

Muhtasib

The office of Muhtasib was instituted by Caliph'al Mahdi (775-785) to see that the religious and moral precepts of Islam were obeyed and that the offenders were detected and punished. Once the office was instituted it became an integral were part of the administrative set up. Essentially the duties of the muhtasib related to the safeguarding of public moral and the prevention of commercial dishonesty. However an offence had to be committed in the public before the Muhtasib could take cognizance of it.

According to A1 Marwadi the duties of the Muhtasib included prevention of nuisance, removal of obstructions and encroachment upon public streets, prevention of burying people in the lands owned by others, prevention of cruelty to servants and animals, encouraging regular attendance at the mosque, preventing public eating in the month of Ramzan, enforcement of the period of waiting ('iddat) on widows and divorced women, encouragement of the marriage of unmarried girls, chastising anyone found in a state of drunkeness, etc. In his capacity as the superintendent of markets the Muhtasib went through the city daily accompanied by a detachment of subordinates, inspected

[44] B,P,Saksena,Shahjahan of Delhi,p,281.

provisions to see if they were adulterated and tested weights and measures. However, the power of the Muhtasib in awarding punishment was limited inasmuch as he could only try cases when the truth was not in doubt. If a case required sifting of evidence and administering of oaths it had to go to the Qazi.

The Muhtasibs with all the duties as noted about existed in the Mughal administration and were to be found in the capital, as well as at the headquarters of the provinces and their sub divisions. The power of the Muhtasib to award punishment or to try cases however did not exist under the Mughals.

Besides performing the duties enumerated above, under Aurangzeb he was also required to report case of apostasy, blasphamy, heresy and non-conformity and thus became an important officer.

The Muhtasib in Mughal administration was generally a prosecutor of canon law and instituted prosecution on behalf of the government.

Vakil-i-Sharai or Vakil-Sarkar

The Mughal Emperors fully recognised the principle of representation through lawyers and these lawyers were called Emperors, because Mawadi speaks of this profession and considers expert knowledge of the law necessary both for the practice of law and for acting as Qazi.1 The statement of Moreland that "there were doubtless learned students of both Moslem and Hindu text, but there were no advocates or pleaders practising in the courts"2 is not correct as has been pointed out by Bashir Ahmad who has not only given ample references of the presence of the Vakil but has also cited nine cases where the Vakils argued the cases.

During the reigns of Shahjahan and Aurangzeb lawyers were appointed / engaged permanently to defend civil suits against the state and to assist poor litigants with free legal advice. The Vakils were appointed as whole time employees by the state in all the Sarkars and were called Vakil-i-Sarkar or Vakil-i-Sharai [45].

A remuneration at the rate of rupee one per day was paid by the state to the Vakil-i-Sarkar, but it is difficult to say what fee was charged by the Vakils form their clients, however it is certain that the Vakils charged some fee from their clients because

[45] Khafi Khan, vol,2,p,249-252.

Aurangzeb had to issue orders directing the state Vakils to give free advice to paupers. The Vakils ahd to file the vakalat-nama (power of atorney) in the court for every individual case, and a client always retained the right cancelling the vakalat-nama at any stage of the case. Though the Vakil could tender a confession on behalf of his client, but such a confession was not admissible and was not binding on his client .

Justice based on Emperor, not on the Islamic law.

As we have seen in Pre –Mughal Period that justice was based on the Zawabit that is state law.In the same way ,the Mughal's justice system was based on the Emperor.He was the head of the all kind of justice.We say that being a muslim and coming from the outside the land they brought new system of judiciary which based more or less on Persian culture. They did follow sometimes Islamic law for getting legitimacy .One cay there basic can be Islamic but punishment and crime was certainly not Islamic. Our first three chapters discussed very deeply about the Islamic law .If one goes through these Islamic law, one may find that all the Islamic laws, were capable of implemented. For instance,Drinking wine is sin in the Islamic law but all the emperors took wine very badly. Eating pork is anti Islamic but Jahangir has taken pork during the month of Ramazan which is a holy month of the Muslims.We can see them in practising of justice .All the emperors,even Auranzeb also were not very strict to Islamic laws. Auranzeb order was also nor implemented in all over the empire.Although he followed some Islamic law but he was more branded as orthodox ruler .He also advised the Hindus to become a good hindu.One reference I have gone through which says that one day one Hindu person went to Auranzeb and told that he wanted to convert to Islam.Auranzeb asked why? He was silent.He told that if you think that I will provide any reward then you are wrong .You should follow the Hindu religion.He follow the Muslim religion but why not you people. Being orthodox for your religion, this does not mean that you are wrong. People should not get affected with religious activities.This is important. This is what Auranzeb wanted to mean.

Of course,all the emperor made Mosque and worships and followed somewhere Islamic laws but it was not regular. Being Emperor,they were not able to look the whole India

well ,therefore they appointed Qazi,parangana Qazi and many more officials to look the justice system.

Since the government was also based on the Monarchy which followed the autocratic rules and being Muslim and to get legitimacy they followed some where Islamic law.

Various Courts under the Mughal Government

The organization and location of the law courts (adalat)under the Mugals was moulded on the administrative pattern of the Empire consisting of villages , Pargnas, Sarkars, Subahs and the center or the Capital.Each of these divisions had to be provided with courts where justice could be administered. The village, which technically formed the lowest unit of administration, however, was left uninterfered by the Mughal government and was allowed to continue the age-old tradition. Thus for the purpose of organisation of law courts set up by the administration, we may start with the Pargana.[46]

PARGANA ADALAT

Each Pargana was provided with an Adalat (court) which was placed under a Qazi who was responsible for the administration of justice within the territory of the pargana. Thus the adalat of the Qazi was the lowest court in

[46] U,N,day,p,204.

the Mugal administration. The Pargana Qazi was appointed through /by a Royal Sanad and exercised jurisdiction over the villages included in the pargana. The Pargana Adalat, though lowest was provided with a number of officers and certain paraphernalia to give it the dignity of a court and the ability to enforce its judgement. The Pargana Qazi's adalat had a Mufti, a Muhtasib and a Darogha-i-Adalat attached to it. In some of the parganas the same person was appointed both as Mufti and as Muhtasib which however did not imply merging of the offices but only meant that in such cases the mufti was called upon to perform the extra duty besides his own. Darogha-i-Adalat was generally a petty mansabdar and was posted to maintain order and prevent any kind of disturbance during the proceeding of the court.[47]

JUDICIARY IN THE SARKAR

The Sarkar in the Mughal administration was the subdivision of a Subah and had within it a large number of Parganas.The government of the Sarkar in its functioning had not only to Supervise the work of the parganas but also to look after aspects which were not concerned with the pargana. For the purpose of administration of justice, the Sarkar had different types of courts. The chief civil and criminal court was under the Qazi-i-Sarkar, where cases involving civil, canon and criminal law were heard, and appeals from the Pargana Qazi's courts were filed here. The executive head of the Sarkar (mostly the Faujdar) also exercised judicial authority and in his court cases concerned with disturbances and security etc. were heard and decided . The Kotwals in the Sarkar and in the various towns also decided petty cases involving infringement of laws which today may come under municipal laws. The Amil of the Sarkar also had his court where Revenue cases were decided, and appeals from the Pargana amils court came up for hearing. Thus we find that the Sarkar had three types of court (i) the Qazi's court (2) The Amil's courts and (3) the Kotwali. Of these the

[47] Ibid,p,204.

Qazi's court was the main organ of the judiciary in the true sense. According to Dr. P.Saran, "the Faujdar had no judicial powers at all". However, towards the close of the 18^{th} century the Faujdar had come to have judicial authority over all cases other than capital offences. He further holds the view that the Kotwal and Qazi shared the whole business of justice in the Sarkar between them. The Kotwal "was a magistrate, prefect of police and municipal officer rolled into one. As magistrate he took cognizance of criminal cases of the whole sarkar, prefect while in other respects his jurisdiction was limited to the headquarter towns of the sarkar. There is no clear classification of cases which came under authority of the Qazi and the Kotwal, but from the known cases it is quite easy to comprehend that the secular type of criminal suits went to the Kotwal and the religious ones , such as inheritance, marriage, divorce, and civil disputes went to the Qazi's court."[48]

The Sarkar Qazi, who normally held his court at the Sarkar headquarters, was provided with a staff and was assisted by a number of officers who were attached to his court. Qazi's staff consisted of Peshkar, Katib, Amin, Nazir, Deftari Muchalka Nawis and orderlies. The Sarkar Qazi was responsible for judicial administration (both civil and criminal) of the Sarkar , and also heard appeals from the Pargana courts. "He also became the official visitor of jails within his jurisdiction and was given power to inquire into cases of prisoners confined therein.He could review proceedings in the cases of convicted prisoners and to release on bail persons under trial."[49]

The Sarkar Qazi had to perform multifarious duties which were not directly connected with the administration of justice; hence they have been discussed elsewhere. The Qazi was appointed by a Royal Sanad which was issued by the Sadrus Sudur. This however did not make the Qazi a

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[48] P, Saran,provincial government,p,353, as quted by u\U,N, Day ,p,205.

[49] Mirat-i-Ahmadi, by Ali Muhammad Khan,in 2 vol,published by Gaekwar Oriental Series,Baroda,1965,p,282-83.

subordinate Sadr Department was a mere matter of routine. The Mughal Emperor Akbar had seperated the judicial department from the jurisdiction of the Sadr and the actual superior of the Sarkar Qazi was the Qazi-i-Subah. Some officers were also attached to the court to assist him in proper discharge of his duties. Of these, Darogha-i-Adalat , Mir Adl, Mufti,l Pandit Mohtasib-i-Baladih and Wakil-i-Sharai deserve special mention. Regarding the post Wakil-i-Sharai it is difficult to say when it actually came into existence, but we find from Khafi Khan that in the reign of Aurangzeb suits against the state were defended by lawyers appointed whole time in every Sarkar with the designation of Wakil-i-Sharai , Wakil-i-Sarkar etc. They were attached to the court of the Sarkar Qazi and their daily fee was fixed at Rupee one. "These Wakils were further directed to give legal advice to the poor free of charge. The appointment was made by the Chief Qazi of the province or sometimes by the Qazi-ul Quzat and their duties according to a letter of appointment given in the *Farameen* were:

1. To conduct suits on behalf of State.
2. To get decrees obtained by the State executed.
3. To acts as legal advisors for the proerties held in Trust by the Qazis."[50]

COURTS AT THE SUBAH LEVEL

The Subah or the province was the highest administrative division of empire and was comprised of a large number of Sarkars and a still larger number of Parganas. Thus the executive head and other officers at the Subah level had to perform, besides normal duties, supervisory duties over entire extent of the province. For administration of justice at the provincial

[50] M.B. Ahmad-Administration of Justice etc. pp. 163-64; Farameen here refers to Farameen us Salatin by S. Bashiruddin. It is a collection of Farmans issued by Mughal Emperors and was published from Delhi. It contains copies of original Farmans which give the duties attached to each office as quoted by u,n, day ,p,207.

level we find four categories of law courts. They are (1) the Nazim's court, (2) the Qazi-i-Subah's court, (3) Diwan-i-Subah's court and (4) Sadr-i-Subah's court. Of all these four categories' except for the Nazim's court, the jurisdiction of each category was more or less defined.[51]

The Nazim's Court

One of the most important functions of a provincial governor was to look after proper Administration of justice within the jurisdiction of his province. In connection with the administration of justice he was enjoined to observe the utmost expedition and not to afflict the people by dilatoriness. In trying cases he was not to rely on witnesses and oaths but to investigate the truth personally and to treat the parties with courtesy. The Nazim's court was both an original and Appellate court, and being the representative of the emperor he received appeals from all the courts situated within the province including even those from the court of Qazi-i-subah. In Original cases, the Nazim usually sat as a single judge, and appeals from his judgment went to the Appellate Courts at the centre. When he heard appeals he sat on a Bench of which the Qazi-i-Subah was invariably a member, unless the appeal was from the court of Qazi-i-Subah. Even Appeals of land revenue cases could be filed with him, though normally this was the work of the court of Diwan-i-Subah. Mufti and Darogha-i-Adalat were two important officers attached to his court who were to assist him in proper discharge of his judicial duties.[52]

Qazi-i-Subah

Judiciary proper or the Department of judicial administration in the province was placed under the charge of the Qazi-i-Subah or the Chief provincial Qazi. Though some writers have expressed the view that Qazi-i-

[51] Ibid,p,207.
[52] Ibid,p,207-208.

Subah was appointed by the Qazi-ul Quzat or the Sar-i-Jahan, in reality the final appointing authority was the Emperor himself, and these were no more than recommending agencies or better still accepted as experts for selecting a person for the post, and not the final appointing authority.

The Qazi-i-Subah had original, civil and criminal jurisdiction and the Chief Court of Appeal in the Provinecs. His judicial powers were co-extensive with those of the Governor and he had a permanent seat on the Bench of the Governor's court. Appeals come to him from the District Qazis within the Subah and he was consulted by the Governor in cases where the use of the Sovereign's prerogative came into question. The work of the Qazi-i-Subah was fairly heavy and also very delicate, because a little oversight of any aspect of law might result in a miscarriage of justice. It was to
assist him in proper discharge of his duties that besides the office staff as mentioned under the Qazi-i-Sarkar's Court, the following officers were attached to his court:- Mufti, Mohtasib, Darogha-i-Adalat, Mir Adl, Pandit, Sawaneh Nawis, and Waqai-Nigar.[53]

Diwan-i-Subah's Court

The Provincial Diwan's court was only to look after the revenue cases. The appeals against the Amils, orders or decision were filed in the court and appeals from his court lay with the Diwan-i-Ala, of course the Emperor or the Nazim as his representative, exercised jurisdiction over the entire administrtion and thererfore could entertain appeals from the diwan-i-Subah's court.[54]

[53] Ibid,p,208.
[54] Ibid,p,208.

LAW COURTS AT THE CENTRE OR THE CAPITAL

The Emperor's Court

The Emperor's Court was the highest court in the empire, and he tried both civil and criminal cases and also sat as the final court of appeal within the empire. When he heard appeals he presided over a bench consisting of the Qazi-ul-Quzat, and other Qazis of his court and decided questions both of law and fact. 1 As a court of first instance he generally had the assistance of a Mufti or a Mir Adl. Petitions were presented to him by the Darogha-i-Adalat. If he required any authoritative interpretation of law he referred the matter to a bench for the purpose.

The Emperor's Court was popular and the public made representations and appeals without any fear or hesitation and obtained redress from his impartiality.

The Emperor was assisted by Mufti, Mir Adl, Darogha-i-Adalat, Mohtasib etc.

Chief Court of the Empire

This court was presided over by the Qazi-ul-Quzat who was the Chief justice of the realm and in importance was only next to the Emperor. As Qazi-ul-Quzat he used to administer the oath of accession to the sovereign and to order "Khutbah" to be read in the Emperor's name in the mosques in order to give validity to his accession.2 The appointment of Qazi-ul-Quzat or the Chief Justice was made by the Emperor and for its selection persons with reputation for scholarship and sanctity of character were taken into consideration. He could be appointed directly, though Provincial Qazis were also sometimes promoted to this post.

The Qazi-ul-Quzat had power to try original civil and criminal cases, to hear appeals from and to supervise the working of the Provincial courts. He had always one or two Qazis to assist him in his work.[55]

[55] Ibid,p,209.

1. Leading the Friday and the Id prayers at the Capital.

2. Attending state and other important funerals.

3. Conducting marriage ceremonies of the Royal Family.

4. Supervision of the enforcement of the shara.

5. In the matter of fresh taxation the opinion of the Chief Justice was invariably taken.

The Imperial capital had its own Qazi who enjoyed the status of a Qazi-i-Subah and in temporary vacancies sometimes officiated for the Qazi-ul-Quzat.

QAZI-I-ASKAR

The army was provided with a separate Qazi called Qazi-i-Askar or Qazi-i-Urdu. Qazi-i-Askar moved from place to place with the troops, but his jurisdiction was limited to the area defined for him. In a case in which one party resided in the jurisdiction of the Qazi-i-Askar and the other in that of the Qazi of the city and the latter insisted on having the case tried in the city court the Qazi-i-Askar could not try it unless he had been especially empowered to try all such cases in which one party belonged to his area of jurisdiction. On the other hand if both the parties belonged to the army or askar area but wanted to take their case to the city court they could do so and the Qazi of the city had the power to entertain such cases.

Darogha-i-Adalat, Mufti, Mohtasib adn Mir Adl, as already noticed earlier, were other officer attached to the court of the Qazis.[56]

The Chief Revenue Court

Diwan-i-Ala who presided over the Chief Revenue Court exercised authority over the Revenue and the Financial matters of the Empires . Though appeals could be made from the provinces in Revenue matters, but in actual practice ,he was mainly occupied with matters of financial policy in the state and judicial work from the provinces in the from of appeals seldom came to him and only in rare cases was any petition made4 against the Emperor.[57]

[56] Ibid,p,210.
[57] Ibid,p,210.

LAW COURTS OF THE ADMINSTRATIVE DIVISION[58]

From the lowest to the highest

VILLAGE

Trial Court	Powers	Presiding Officer
The Panchayat	Petty village Disputes	The village Headman

Appeals, if any to Qazi-i-Sarkar

PARGANAH

A. Adalat Pargana (Original Civil and Criminal Court)	All common and civil law cases. had also poweres to try Canon Law cases, but none seems to have been tried by a Pargana Qazi.	Qazi-i-Parganah

Appeals to Qazi-i-Sarkar

B. Kachahri	Revenue cases	Amin or Amil Korori.

Appeals to Sarkar Amalguzar

Kotwali	petty Municipal offences.	Kotwali-i-Pargana

Appeal to Qazi-i-Sarkar

SARKAR

A. The Adalat	All civil, Canon	Qazi-i-Sarkar.

58 Ibid,pp,21213.

Sarkar (Chief Civil and Crimi- Nal Court of the Disrict)	and criminal Law cases . Appeals	

Appeals lay to Qazi-i-Subah

B. Faujdari Adalat	Riot and security cases .	The Faujdar.

Appeals lay to the Governer's Court

C.Kotwali	Petty Police Cases	Kotwal-i-Sarkar.

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Appeals to Qazi-i-Sarkar

D. Kachahri Amalguzari.	Revenue Cases. Appeals from Pargana Amils.	Amalguzar

Appeals to Diwan -i- Subah

SUBAH

	Trial Court	Powers	Presiding Officer
A.	(i) Nazim's own Court.	Original	Nazim-i-Subah
	(ii) Adalat-i-Nazim-i-Subah. (Governor's Bench)	Original Appellate Revisional	Nazim-i-Subah.

Appeals lay to (A) Emperor's Court, (B) Chief Justice's Court by way of petition

B. The Chief	Original,	Qazi-i-Subah

Appellate Court	Appellate Canon law Cases.	

Appeals to (A) Governor's Bench (B) Chief Court of the Empire

C. Chief Revenue Court	Appellate Original	Diwan-i-Subah

Appeals law to the Diwan-i-Ala (Imperial Diwan)

IMPERIAL CAPITAL

A. Emperor's Court	Original (with Mufits) Appellate.	Emperor
B. The Supreme Court	Original Appellate	Emperor
(i) Emperor's Bench	Revisional	

NO APPEAL LAY

(ii) The Chief Court of the Empire	Original, Appellate Revisional Canon Law	Qazi-ul-Quzat

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No appeal lay but petition in Revision could be moved in the Emperor's Court or his inherent powers could be invoked.

1. The Chief Revenue Appellate Court. Diwan-i-Ala.

NO APPEAL LAY

In Revisional matters application could be moved in the Emperor's Court or the Emperor could take action at his own initiative.

Chapter-5th

Administration of Justice by Babur and Humayun

Babur was a ruler of our country. He was a founder of Mughal Empire in India. Although he did not get enough time for the administration as Muhammad Akbar has rightly pointed out his status as conqueror I quote him "When Babar entered India as a conqueror, he followed in every sphere of administration the practices established by the Pathan Kings whom he supplanted on the throne of Delhi. During his short reign of about five years, he did not have a chance to devise any new system of government. Most of his time was spent in fighting his foes. He governed the land by means of large camps each commanded by a general devoted to the monarch. The king as well as his generals dealt with the few cases that were brought before them in a summary fashion. No regular system was in vague; no administrative practice or convention was established."[1] But his statement "he did not have a chance to devise any new system of government----. No regular system was in vague; no administrative practice or convention was established" can be contested because Babur had great sense of justice.

The contemporary Persians sources talks about it.I quote one verse which is very important to show the interest of Babur in justice;

"If you have done ill, keep not an easy mind, for retribution is Nature's law."[2]

Babur manages his justice in his gate which was his place of judegment.Babur used a variety of phrases of to express lordship in the gate. That was Mirza Gate.[3](Place of

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[1] Akbar,Muhammad,the administration of justice by the Mughals,published by Muhammad Ashraf Kashmir Bazar ,Lohore,Pakistan,1948,7.

[2] Zahiru'd-din Muhammad Babur Padshah Ghazi,Babur –Nama,translated by Annette Susannah Beveridge ,published by Low Price Publications,firat published by 1921,reprinted in LPP 1989,1997,2000,2006,New Delhi, vol 1,p,44.

[3] Zahiru'd-din Muhammad Babur Padshah Ghazi,Babur –Nama,translated by Annette Susannah Beveridge ,published by Low Price Publications,firat published by 1921,reprinted in LPP 1989,1997,2000,2006,New Delhi, vol 1,p,24.

Judgement).He appointed Khudai Birdi Beg as the head of the Mirza Gate. Khudai –Birdi was then 25 but youth notwithstanding, his rules and management were very good indeed **A few years later when Ibrahim Begchik was plundering near Aush, he followed him up, fought him, was beaten and became a martyr. At the time, Sl. Ahmad Mirza was in the summer pastures of Aq Qachghat, in Aura tipa, 18 yighach East of Samrkand, and Sl. Abu-sa'id Mirza was at Baba Khaki, 12 yeghach East of Hiri. People sent the news post -haste to the Mirza(s), having humbly repesented it through'Abdu'l-wahhab Shaghawal. In four days it was carried those 120 yighach of road.**

Hafiz Muhammad Beg Duldai was another, Sl. Malik Kash-ghari's son and a younger brother of Ahmad Haji Beg. After the death of Khudai-Birdi Beg, they sent him to contro. 'Umar Shaikh Mirza's Gate, but he did not get on well with the Andijan begs and therefore, when Sl. Abu-sa'id Mirza died, went to Samarkand and took service with Sl. Ahmad Mirza. At the time of the disaster on the Chir, he was in Aura-tipa and made it over to 'Umar Shaikh Mirza when the Mirza passed through on his way to his way to samarkand, himself taking service with him. The Mirza, for his part, gave him the Andijan Command. Later on he went to Sl. Mahmud Khan In Tashkint and was there entrusted with the guardianship of khan Mirza (Wais) and given Dizak . He had started for Makka by way of Hind before I took Babul (910AH. Oct.1504 AD.), but he went to God's mercy on the road. He was a simple person, of few words and not clever.

Khwaja Husain Beg was another, a good- natured and simple person. It si said that, after the fashion of those days, he used to improvie very well at drinking parties.

Shaikh Mazid Beg was another, my first guardian, excellent in rule and method. He must have served (khidmat qilghandur) under Babur Mirza (Shahrukhi). There was no greater beg un ' Umar Shaikh Mirza's presence. He was a vicious person and kept catamites.

'Ali-mazid Quchin was another; he rebelled twice, once at Akhsi, once at Tashkint. He was disloyal, untrue to his salt, vicious and good-for-nothing.

Hasan (Son of) Yaq'ub was another, a small-minded, good- tempered, smart and active man. This verse is his:----

"Return. O Huma, for without the parrot-down of thy lip,

The crow will assuredly soon carry off my bones. "

He was brave, a good archer, played polo (chaughan) well and leapt well at leap-frog. He had the control of my Gate after 'Umar Sahikh Miraza's accident. He had not much sense, was narrow-minded and somewhat of a strife-stirrer.

Qasim Beg Quchin, of the ancient army-begs of Andijan, was another? He had the control of my Gate after Hasan Yaq'ub Beg. His life through his authority and consequence waxed without decline. He was a brave man; once he gave some Auzbegs a good beating when he overtook them raiding near kasan; his sword hewed away in ' Umar Shaikh Mirza's presence; and in the fight at the Broad Frod (Yasi-kijit circa 904AH.-July, 1499AD.) he hewed away with the rest. In the guerilla days he went to Khusrau Shah (907 AH. At the time I was planning to go from the Macha hill-country to Sl. Mahmud Khan, but the came back to me in 910 Al. (1504 AD.) and I showed him all my old favour and affection. When I attacked the Turkman hazara raiders in Dara-i-khwush (911AH .) he made better advance, spite of his age, than the younger men; I gave his Bangash as a reward and later on, after returning to Kabul, made him humayun's guardian. He went to God's mercy about the time Zamin-dawar was taken (circa 928AH.-1522AD.). He was a pious, God-fearing Musalman, an abstainer from doubtful aliments; excellent in judgment and counsel, very facetious and, though he could neither read nor write (ummiy), used to make entertaining jokes.

Baba Beg' Baba Quli (Ali) was another, a descendant of Shaikh 'Ali Bahadur. They made him my guardian when Shaikh Majid Beg died. He went over to Sl. Ahmnad Mirza when the Mirza led his army against Andijan (899AH.), and gave him Aura-tipa. After Sl. Mahmud Mirza's death , he left Samarkand and was on his way to in me (900 AH.) when Sl. 'Ali Mirza, issuing out of Aura-tipa, fought, defeated and slew him. His arrangement and equipment were excellent and he took good care of his men. He prayed not ; he kept no fasts; he was like a heathen and he was a tyrant.

'Ali –dost Taghai was another, one of the Saghrichi tuman-begs and a relation of my mother's mother, Aisan-daulat Begum. I favoured him more than he had been favoured in 'Umar Shaikh Mirza's time. People said, "Work will come from his hand." But in the many years he was in my presence, no work to speak of came to sight. He must have served Sl. Abu-sa'id Mirza. He claimed to have power to bring on rain with the jade-stone. He was the Falconer (qushch), worthless by nature and habit, a stingy,serve ,strife-stirring person,false ,self-pleasing,rough of high tongue and cold of face.'

"Muhammad-i-wali Beg was another, the son of the Wali Beg already mentioned. Latterly he became one of the Mirza's great begs but, great beg though he was, he never neglected his service and used to recline (yastanib) day and night in the Gate. Through doing this, his free meals and open table were always set just outside the Gate. Quite certainly a man who was so constantly in waiting, would receive the favour he received! It is an evil noticeable today that effort must be made before the man, dubbed Beg because he has five or six of the bald and blind at his back, can be got into the Gate at all ! Where this sort of service is , it must be to their own misfortune! Muhammad-i-wali Beg's public table and free meals were good ; he kept his servants neat and well-dressed and with his own hands gave ample portion to the poor and destitute, but he was foul-mouthed and evil-spoken. He and also Darwish-i-ali the librarian were in my service when I took Smarkand in 917 AH. (Oct. 1511 AD.) ; his talk lacked salt; his former

claim to favour was gone. His assiduous waiting appears to have been the cause of his promotion"[4]

Chief Justice (Sadur) during Babur Reign

Babur appointed chief justice for seeing the administration of justice. He appointed one Mir Sar-I-barahna.He was from a village in Andijan and appeared to have made claimed to be a Sayyid(Mutasayyid).He was very agreeable companion, pleasant of temper and speech. His were the judgment and rulings that carried weight amongst men of letters and poets of Khurasan.He wasted his time by composing ,in imitation of the story of Amir Hamza,a work which was one long far fetched lie, opposed to sense and nature.[5]

Kamaluddin Hussain (Guzur-gahi) was another. Though he was not a Sufi, he was mystical .Such mystics as he will have gathered in 'Ali-Sher Beg's presence and there had gone into their raptures and ecstasies. Kamaluddin Hussain will have been better born then most of than ;his promotions will had been due to his good birth, since he had no other merit to speak of.[6]

There were the officers who were maintaining the office of justice of the Babur.

Babur also showed a great justice to women as he wrote in his Baburnama in following words "Few amongst women will have been my grandmother's equal for judgemnt and counsel; she was very wise and farsighted and most affairs of mine were carried through under her advice. She and my mother were (living) in the Gate-house of the outer fort; hasan-i-yaq'ub was in the citadel. When I went to the citadel, in pursuance of our decision , he had ridden out, presumably for hawking, and as soon as he had our news, went off from where he was towards Samarkand . The begs and others in sympathy with him, were arrested; one was Muhammad Baqir Beg; S1. Mahmud Duldai, Sl. Muhammad Duldai's father, was another; there were several more; to some leave was given to go for Samarkand. The Andijan government and control of my Gate were settled on (Sayyid) Qasim Quchin.

A few days after Hasan-i-yaq'ub reached Kand-i-badam on the Samarkand road , he went to near the Khuqan sub-division (aurchin) with ill-intent on Akhsi. Hearing of fit, we sent several begs and braves to oppose him ; they, as they went, detached a scouting party ahead; he, hearing this, moved against the detachment, surrounded it in its night- quarters and poured flights of arrows (shiba) in on it. In the darkness of the night an arrow(auq), shot by one of his own men, hit him just (auq) in the vent (qachar) and before he could take vent (qachar), he became the captive of his own act.

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[4] Ibid,p,277.

[5] Ibid,p,280.

[6] Ibid,p,280-281.

"If you have done ill, keep not an easy mind, for retribution is Nature's law."

This year I began to abstain from all doubtful food, my obedience extended even to the knife, the spoon and the table-cloth; also the after-midnight prayer (tahajjud) was less neglected."[7]

Law of Babur

Babur also made some law or rule on drinking. He made this himself also .once he sat for drink,he used to take 20 to 30 but once risen,he would not drink again for another 20 or 30 days.He was a good drinker.On non-drinking day he ate without conviviality.Avarise was dominant in his personality.[8]

Punishment and crime

Babur gave punishment to the people for committing crime .According to his memoirs there were several mode of punishment which were following;

1. Beared shaving[9]
2. Blinding[10]
3. Bow -stringing[11]
4. Quartering[12]
5. Hanging[13]
6. Impalement[14]

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[7] Ibid,pp,43-44.

[8] Ibid,p,34.

[9] Ibid,p,404

[10] Ibid,p,50.

[11] Ibid,110.

[12] Ibid,238.

[13] Ibid,345.

[14] Ibid,341.

7. nose-silting[15]
8. Paraded mutilated[16]
9. shooting[17]
10. Skinning alive[18]
11. For disloyalty[19]
12. Throw under the feet of Elephant[20]
13. Rank and station taken back[21]
14. Taken back paragana and country[22]
15. Exhibited in town after shaving[23]
16. Capital punishment[24]
17. Murdered[25]

Babur-Nama has description of all the above mentioned punishments.

Beared shaving

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[15] Ibid,p234.

[16] Ibid,p,404.

[17] Ibid,p,543.

[18] Ibid,p,542.

[19] Ibid,p,70.

[20] Ibid,p,542.

[21] Ibid,p,542.

[22] Ibid,p,542.

[23] Ibid,p,542.

[24] Ibid,p,63.

[25] Ibid,p,50.

beared shaving was very common phenomenon in Mughal India particularly during Babur time.Babur gave this punishment to one of his Hussain Hasan begs and I quote;

"As we went along the road I said with anger and scorn, to the begs who had been with Hussain 'you! What men! there you stood on quit flat ground ,and looked on while a few Afghans food overcame such a brave in the way did' your rank and station must be taken from you ;you must lose pragana and country ;your beards must be shaved off and you must be exhibited in towns; for there shall be punishment assuredly for him who looks on while such a brave is beaten by such a foe on deal-levell land ;and reaches out on hand to help " the troop which went to kar – mash brought back sheep and other spoil. One of them was Baba Qashqa Mughul; an attemtp Afghan had made at him with a sword; he had stood still to adjust an arrow, shot it off and brought his man down." [26]

Blinding

'Blinding'was also a mode of punishment.Babur used to give this punishment.He has given this punishment to his Amir Khusrau Shah sons for not doing enough work for Babur.His two sons were.one was blinded and one was murderd.[27]He also gave this punishment to Miran Shah Mirza who was a rebellion, was blinded and put to death.[28] He also gave this punishment to Begam Sultana ,a slave women after blinding she was handed over to Masud Mirza.[29]

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[26] Ibid,p,404.

[27] Ibid,p,50.

[28] Ibid,p,95.

[29] Ibid,p,166.

Muhammed Kasim Ferishta has a recorded good instance of justice of Babur .He wrote in following words;[30]

"When he was prince of Furghana , the owner of a valuable caravan of Khtta, who was crossing the mountains of Andijan ,was killed by lightning. Babur ordered all the goods to be collected, and sent messengers to Khutta to proclaim the accident, and bring the owner's heirs to his court. Upon their arrival ,at the end of two years ,he entertained them hospitably,and returned them the whole of their property ,not only refusing to accept a present,but even to be reimbursed for the expenses incurred in securing in it"

Gulbadan Begum has cited in her narrative a few instances which show Babar's element way of administering justice:

1. The forces of Khusro Shah were encamping between Kandez and Badakshan. In spite of the bad treatment which he had meted out to the two cousins of Babar, never wished to wreak vengeance upon him and ordered that whatever he desired should bestowed upon him.[31]

2. Mirza Khan and Mirza Mohammad Hussain had rebelled and besieged Kabul. Babar soon conquered the fort. Mirza Khan concealed himself in his mother's home who was the king's aunt. Mohammad Hussain also hid himself in his wife's house that was also related to the king. The king pardoned both of them.[32]

What Babar left undone, could not be accomplished by his son Humayun. The fact that the old system of government still prevailed in India is proved by the ease with

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[30] Muhammed Kasim Ferishta,History of the rise of the Muhommedan power in India,translated from the original Persian of Muhammed Kasim Ferishta,by John Briggs,published by Low Price Publications,set of 4 vols.bound in 2.vol 2,p ,42.

[31] Humayun Nama by Gulbadan begum, p. 5 (Urdu translations).

[32] Humayun Nama by Gulbadan Begum, p. 8 (Urdu translations).

which Humayun was supplanted by Sher Shah whose chief merit was his abler generalship and superior military tactics. Humayun again made a bid for the throne and before his death drew up a system for the government of his reconquered realm. He divided the affairs of Government into four departments so that the business of state might be conducted efficiently. For these departments he appointed four ministers.[33]

The country was to be covered with a number of separate camps at fixed places. The Emperor as well as the various generals dealt with the few cases that arose in a summary fashion like Babar. The system was quite incapable of welding the conquerors and the conquered into one harmonious whole.

A few cases have been recorded in the Humayun Nama which were personally decided by the king:

1. He heard that Mohammad Zaman Mirza had murdered Haji Mohammad Khan Koki's father and that he was plotting rebellion. He sent a man to call him; he arrested him and imprisoned him at Biana and entrusted him to Yadgar Taghai. In the meantime, Yadgar Taghai's men affected the escape of Mohammad Zaman. The king ordered that the eyes of Sultan Mirza be put out; so they were blinded.[34]

2. When the king was in Persia,m Khwaja Ghazi and Roushan Koka became the cause of ill-will between him and the Shah of Persia. The King of Persia regretted that these two men had caused misunderstanding between them. Both of them were condemned and the king ordered them to be imprisoned.[35]

3. When he fought against Mirza Kamran, his soldiers defeated Kamran's men and arrested some of them. He ordered the Mughals to "cut them to pieces." The king executed some of them and others were imprisoned.[36]

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[33] Humayun Nama by Khondamir as given in Elliot, vol. V, p. 123.
[34] Humayun Nama by Gulbadan Begum, p. 26 (Urdu Translation).
[35] Ibid, p. 68
[36] Ibid, p,. 75

In spite of repeated provocations from Kamran, he did not at all trouble him. But at least he was constrained to take severe action against him and when he reached the neighbourhood of Rohtas, he ordered Sayed Mohammad to blind Kamran. The order was promptly carried out.[37]

Conclusion: So we find that during the time of the first two Emperors, administration of justice was organized in their own way. It was not based on the Islamic laws as many historians pointed out that mode of punishment was on the Islamic laws.Conclusiously we can say that it was ruler who decided the mode of punishment. It was based on his will that there was sense of justice committing to immediate people. However, mode of punishment was very cruel.

[37] Humayan Nama, by Gulbadan Begum, p. 89 (Urdu translation).

Chapter-6th

Administration Of Justice byAkbar

Akbar was a great ruler of our country and placed a very secular idea in front of the people. His every gesture is very unique .It is seen in his every action and act. His thinking is also very great in terms of his administration. He brought many changes in the administration and did very good job for betterment of the people. He was the first ruler in our country who placed many secular ideas in front of the people which is very valuable for every body. He is a national monarch .Being an autocratic emperor; he follows democratic process in many ways. One can look upon his Din-i-Illahi ,Ibadtkhakananan , religious policy towards everyone and policy toward Hindu.

In the same way his administration of justice is also very important to understand the India and the Akbar, particularly his secular policies.Muhammad Akbar pointed out about the Akbar .He says that the many famous sovereigns of the East few were comparable with Akbar, and to him indisputably belonged the first place amongst the rulers of India. Not only was he equally great as a man, a warrior, and a stateman, but his reign fell at a time fitted to afford the freest play to the eminent qualities. The Mughal Emperors of India prided themselves on their love of equity, and regarded the administration of justice as an important duty which the sovereign could not afford to neglect. [1]

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[1] Akbar,Muhammad,the administration of justice by the Mughals,published by Muhammad Ashraf Kashmir Bazar ,Lohore,Pakistan,1948,11.

Abul Fazal writes about the Akbar's idea of justice. He says that It was a requisite of the high office of sovereignty that justice be administered to the oppressed without distinguishing between friend and foe, relative and stranger, and that it placed retribution for tyranny in the collar of the tyrant, so that those connected with the sovereign, and those attached to the court may not make their relationship a means of oppression, and that if, which God forbid, any such event should occur out of infatuation, right-acting men may be under no apprehension in reporting the oppression, but may boldly bring it forward. God be praised that this lofty characteristic was marked in the disposition of the Shahinshah that the human intellect was at a loss how to describe 1 and 1. This world-ministering quali' was so unaffectedly existent in the sacred nature of king that all classes rely upon it and pass their days in peace and tranquility.[2] According to Akbar, Justice means to him;

"If I were guilty of an unjust act, I would rise in judgment against myself. What shall I say, then, of my sons, my kindred and others?" [3]This saying was not merely a copybook maxim. He honestly tried to do justice according to his lights in the summary fashion of his age and country.

Akbar's idea of justice was very great .It varies very different and he talked about how king should be, how a person should be possessed, how a women should treat, what kind of personalities should posses by a simple man

[2] Fazl,Abul,Akbarnama,Translated from the Persian by H.Beveridge,two Vols in one,vol.1 -11,Low price publications,Delhi,2007,p,334.

[3] Allami,Abu Fazal,the A-in-I Akbari ,vol II-III, ,translated by Colonel H.S.Jarrett,first published 1927 and reprinted in LPP 1989,1994,1997,2001,2006, Low price publications,2006,New Delhi,p,433.

etc.Means to say that his idea of justice has a bigger range .it was not only confined to the absolute justice only.

Abul Fazal writes in the happy saying of his majesty in following lines;[4]

"As I have now succinctly described the Sacred Institutes, in acknowledgement of my own obligations and as a gift of price to the rest of mankind, it appears fitting that I should record somewhat of the sayings of His Imperial Majesty in relation both to secular and spiritual concerns, in order that his words and actions may become known to far and near."

The following were among his utterances: -

"There exists a bond between the Creator and the creature which is not expressible in language."

"Each thing has a quality inseparable from it and the heart is influenced by some irresistible attachment to the power of which it submits and builds thereon the foundation of its sorrows and joys. Whosoever by his brilliant destiny withdraws his affections from all worldly concerns, attains to the Divine love which is above all others"

"The existence of creatures depends on no other bond than this. Whoever is gifted with this wisdom shall reach a high perfection"

"Whosoever habituates himself to preserve this sacred relation, will be withheld from it by no other occupation"

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[4] Allami,Abu Fazal,the A-in-I Akbari ,vol II-III, ,translated by Colonel H.S.Jarrett,first published 1927 and reprinted in LPP 1989,1994,1997,2001,2006, Low price publications,2006,New Delhi,pp,424-452.

"Hindu women fetch water from their rivers, tanks or wells, and many of them bear several pitchers one above the other upon their heads and converse and chat freely with their companions, walking the while over any inequalities of ground. If the heart in like manner preserves the balance of its pitchers, no harm will befall them. Why should men be inferior to these in their relations with the Almighty"

"When this interior affection both in its immaterial and material aspects is thus strengthened, who can sever the attachment of the rational soul to the Supreme Being?"

"From the practice of real asceticism the transition is easy to unlawful mendicancy. Since a thing is best comprehended by contrast with its opposite, the latter also thus comes to be pleasurably regarded"

"The intellect will not with the full assent of reason, confessedly oppose the divine law, but some do not believe in the divine books, nor credit that the Supreme essence that is tongueless will express itself in human speech, while others again differ in their interpretation of them"

"The divine grace is shed upon all alike, but some from unpreparendness in due season and others from incapacity are unable to profit thereby; the handiwork of the potter evidences this truth."

"The object of outward worship which they affect to call a new divine institute, is for the awakening of slumberers, otherwise the praise of God comes from the heart not the body."

“The first degree of dutiful obedience is not to scowl with knitted brows when trials befall but regarding them as the bitter remedies of a physician, to accept them with a cheerful countenance.”

“That which is without form cannot be seen whether in sleeping or waking, but it is apprehensible by force of imagination. To behold God in vision is, in fact, to be understood in this sense.”

“Most worshippers of God are intent on the advancement of their own desires not on His worship.”

“As the dark hair turns to grey, the hope arises that this hue which is never far distant may be kept burnished by the wondrous workings of destiny, in order that the rust of the heart may be cleansed with it and its vision illumined.”

“Some there are who maintain that men walk in opposition to the will of God, and that their salvation depends on their renunciation of this evil habit; but he who is spiritually illumined knows that none can effectually oppose His commands, and physicians from this reflection provide a remedy for those that are sick.”

“Each person according to his condition gives the Supreme Being a name, but in reality to name the Unknowable is vain.”

“The object of an appellative is the removal of ambiguity, but this is not predicable of the All Holy Essence.”

“There is no need to discuss the point that a vacuum in nature is impossible. God is omnipresent.”

"All that men account good and bad and virtue and vice, arises from the wondrous phases of God's grace: the discordant effects result from human action."

"To impute the existence of evil to Satan is to make him a co-partner of the Almighty. If he is the robber, who is responsible for his being one?"

"The legend of Satan is an old-world nation. Who has the power to oppose the will of God?"

"A peasant was seized with a desire to seek the Lord. His spiritual guide learning his love for his cow placed him in a confined space and directed him to exercise himself in mediation on that object. After a time he called him forth to test him. As the man had been absorbed in that contemplation, he persuaded himself that he had horns, and replied that his horns prevented his exit. His director seeing his single-mindedness, by degrees weaned him from his error."

"The superiority of man rests on the jewel of reason. It is meeting that he should labouur in its burnishing, and turns not from its instruction."

"A man is the disciple of his own reason. If it has naturally a good luster, it becomes itself his director, and if it gains it under the direction of a higher mind, it is still a guide."

"Commending obedience to the dictates of reason and reproving a slavish following of others need the aid of no arguments. If imitation were commendable, the prophets would have followed their predecessors."

“Many whose minds are diseased persuade themselves into an affectation of health, but the spiritual physician recognizes the impress on their brow.”

“As the body becomes sickly from indisposition, so the mind has its disorder; knowledge decays until a remedy is applied.”

“For a disordered mind there is no healing like the society of the virtuous.”

“To read the characters of men is a thing of great difficulty and is not in the power of every one.”

“The soul notwithstanding its superiority, takes the tone of the natural disposition by association with it and the brilliancy of its luster thus becomes dimmed with dirt.”

“Through dullness of insight the concerns of the soul which are the source of happiness are neglected, while the pampering of the body which enfeebles the spirit is eagerly practiced.”

“Men through attachments to their associates acquire their disposition, and much of good and of evil thus results to them.”

“When his understanding is still undeveloped, man is in constant change of mood; at one time taking joy in festivities, at another sitting disconsolate in the house of mourning. When his vision is raised to higher things, sorrow and joy withdraw.”

“Many in the conceit of their imagination and entangled in the thornbrake of a blind assent to tradition, believe themselves to be followers of reason, whereas if be carefully regarded they are not in its vicinity.”

“Many simpletons, worshippers of imitative custom, mistake the traditions of the ancients for the dictates of reason, and garner for themselves eternal perdition.”

“Acts and words are variously the effects of good sense, or of desire or of passion, but through the withdrawal of impartial judgment the facts are noisily misrepresented.”

“When rising from sleep which is a semblance of death, one should be earnest in giving thanks for a renewed life by seemly thoughts and virtuous actions.”

“Conscience requires that rectitude and probity which is commendable in the sight of all men should be associated with appropriate action.”

“One should first labour for one’s own edification and then turn to the acquisition of knowledge in the hope of lighting the lamp of wisdom and extinguishing the risings of dissension.”

“Alas! That in the first flush of youth our inestimable lives are unworthily spent. Let us hope that in future they may virtuously terminate.”

“The vulgar believe in miracles, but the wise man accepts nothing without adequate proof.”

"Although temporal and spiritual prosperity are based on the due worship of God, the welfare of children first lies in obedience to their fathers."

"Alas! That the Emperor Humayun died so early and that I had no opportunity of showing him faithful service!"

"The sorrows of men arise from their seeking their fortune before its destined time, or above what is decreed for them."

"(To his son.) My good counsel is your brother. Hold it in honour."

"Hakim Miraza[5] is a memorial of the Emperor Humayun. Though he has acted ungratefully, I can be no other than forbearing. Some bold spirits asked permission to lie in ambush and put an end to that rebel. I could not consent, thinking it remote from what was befitting in his regard. Thus both that distinguished memorial of majesty escaped from harm, and my devoted friends were shielded from peril."

"The concerns of men are personal to themselves but through the predominance of greed and passion they intrude upon (those of) others."

"It is meet that worldlings should lead a busy life in order that idleness may be discouraged and the desires may not wander towards unlawful objects."

[5] Akbar's brother, king of Kabul. He rebelled against Akbar, invaded India and besieged Lahor in the 11th yea of Akbar's reign. See Akbarnamah, Eng. Tr., vol. ii. 407-412, vol. iii. 532-543.

"It was my object that mendicancy should disappear from my dominations. May persons were plentifully supplied with means, but through the malady of avarice it proved of no avail."

"The world of existence is amenable only to kindness. No living creature deserves rejection."

"The impulse of avarice, like pride, is not consonant with magnanimity, and, therefore, should not be suffered to enter or influence the mind."

"The office of a spiritual director is to discern the state of the soul and to set about its reform, and lies not in growing the locks of an Ethiop and patching a tattered robe and holding formal discourses to an audience."

"By guidance is meant indication of the road not the gathering together of disciples."

"To make a disciple is to instruct him in the service of God, not to make him a personal attendant."

"Formerly 1 persecuted men into conformity with my faith and deemed it Islam. As I grew in knowledge, I was overwhelmed with shame. Not being a Muslim myself, it was unmeet to force others to become such. What constancy is to be expected from proselytes on compulsion?"

"Clemency and benevolence are the sources of happiness and length of days. Sheep that produce but one or two young ones in a year are in great numbers, while dogs not-withstanding their prolificacy are few."

"The phrase is remarkable that one sits down [when asked] to show the road, but one rises to rob it.[6]"

"The difficulty is to live in the world and to refrain from evil, for the life of a recluse is one of bodily ease."

"Although knowledge in itself is regarded as the summit of perfection, yet unless displayed in action it bears not the impress of worth; indeed, it may be considered worse than ignorance."

"Men from shortsightedness frequently seek their own advantage in what is harmful to them: how much the more must they err in regard to others."

"Men though blindness do not observe what is around them, intent only on their own advantage. If a cat defiles its claws in the blood of a pigeon they are annoyed, but if it catches a mouse they rejoice? In what way has the bird served them or the latter unfortunate animal done them wrong?"

"The first step in this long road is not to give the rein to desire and anger, but to take a measured rule and align one's actions thereon."

"When the light of wisdom shines, a man distinguishes what is truly his own. What he has is only borrowed."

"In a storehouse, mice and sparrows and other animals have a common interest but from ill-nature each thinks the place his own."

"Most people avoid the society of those they dislike, and do not let the displeasure of God occupy their thoughts."

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[6] Alluding to the Persian idiom. Ba-rahnumai nishistan wa barahzani barkhastan.

"It is my duty to be in good understanding with all men. If they walk in the way of God's will, interference with them would be in itself reprehensible: and if otherwise, they are under the malady of ignorance and deserve my compassion."

"An artisan who rises to eminence in his profession has the grace of God with him. The worship of God is the occasion of his being honored."

"Sleep and food are a means for the renewal of strength in seeking to do the will of God. Miserable man from folly regards them as an end."

"Although sleep brings health of body, yet as life is the greatest gift of God, it were better that it should be spent in wakefulness."

"A man of penetration finds no (preordained) injustice. He regards adversity as a chastisement."

"A wise man does not take heed for his daily sustenance. The analogy of bondsman and servant is an exhortation to him."

"Happy is he who hath an ear wherewith to hear and an eye to see, for as truth cannot be overthrown, [even] a blind man in possession thereof will not choose a bad path.[7]"

"Children are the young saplings in the garden of life. to love them is to turn our minds to the Bountiful Creator."

"To bestow in alms a coin which bears the impress of the name of God is very reprehensible."

[7] The latter part of this sentence is corrupt in the reading. My rendering is therefore conjectural.

"In our prayers we should avoid the asking of temporal blessings in which the humiliation of another person is involved."

"As to the seeking after God being thought to consist in controlling the natural bent of the spirit, most people find the solution of their troubles therein: were it otherwise, fruition would in many become a stair to further gratification."

"The material world is analogous to the world of the spirit, for as in the one what is given in trust is again reclaimed, so in the other, works are required in accordance with knowledge."

"In the receiving of admonition there is no respect of age or wealth. No distinction is recognized between the tender in years or the poor and others in the necessity of listening to the truth."

"The prophets were all illiterate.[8] Believers should therefore retain one of their sons in that condition."

"Since the poet builds on fiction, his creation cannot be seriously accepted."

"A rope-dancer performs with feet and hands, a poet with his tongue."

"He, who happily introduces the verses of another in his own compositions or appositely quotes them, discovers the other's merit and his own."

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[8] "Who shall follow the apostle, the illiterate prophet." Quran, vii; and again "It is he who hath raised up amidst the illiterate Arabians an apostle from among themselves." Sur. lxii.

"A certain seeker after God was addicted to gluttony. He went to an adviser of practical experience, who gave him a bowl made of (the shell of a dried) pumpkin which he was told to fill in measuring his daily food and also to grind its edge a little (daily) and apply (the paste) to his forehead as a sectarian mark. At the same time, to throw him off the scent he taught him a prayer to be recited. In a short time his failing was cured.

"Would that we did not hear of such differences of opinion among professors of secular learning, nor were confounded by contradictory commentaries and explanations of tradition."

"Discourses on philosophy have such a charm for me that they distract me from all else, and I forcibly restrain myself from listening to them, lest the necessary duties of the hour should be neglected."

"There are but three causes of aberrant judgment, viz., incapacity of mind; the society of enemies in the guise of friends; the duplicity of friends that seek their own interest."

"Would that none other than the prudent had the reading and writing of letters, in order that the base might have no opportunity of fabrication for their own purposes, or of persuading short-sighted simpletons by every specious lie."

"The detection of fabrication is exceedingly difficult, but it can be compassed by weighing well the words of the speaker."

"Although I am the master of so vast a kingdom, and all the appliances of government are to my hand, yet since true greatness consists in doing the will of God, my mind is not at ease in this diversity of sects and

creeds, and my heart is oppressed by this outward pomp of circumstance; with what satisfaction can I undertake the conquest of empire? How I wish for the coming of same pious man, who will resolve the distractions of my heart."

"On the completion of my twentieth year, I experienced an internal bitterness, and from the lack of spiritual provision for my last journey, my soul was seized with exceeding sorrow."

"A darvesh on the northern bank of the Ravi, entered his cell and allowed no one to frequent it. On being asked the reason, he replied, that he was engaged in a special devotion and hat until the death of Abdu'llah Khan, governor of Turan,[9] he would not leave it, nor allow any one access to him. His majesty said, "If he is one whose prayers are heard, then let him gird up his loins for my welfare, and refrain from this foolish prayer."

"If I could but find any one capable of governing the kingdom, I would at once place this burden upon his shoulders and withdraw there from."

"If I were guilty of an unjust act, I would rise in judgment against myself. What shall I say, then, of my sons, my kindred and others?"

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[9] this prince had written to Akbar regarding his apostasy from Islam and Miran Sadr and Hakim Human were sent to him on an embassy to explain matters with an ambiguous Arabic verse to the effect that as God and the Prophet had not escaped the slander of men neither could His Majesty. I am not sure whether I have seized the sense of it concluding lines. I infer that Akbar wished it to be known the he had no grudge against Abdu'llah. [Jarrett] [The translation the last sentence has been changed by me J. S.]

"The Giver of desires has committed to my charge many a noble fortress. No one has thought of provisioning them, yet confiding in the strength of God, no further apprehension alarms me."

"Whoever seeks from me permission to retire from the world will meet with cheerful acquiescence in his desires. If he has really withdrawn his heart from the world that deceives but fools, to dissuade him there from would be very reprehensible; but if he only affects it from ostentation, he will receive the requital thereof."

"If in ailments of the body which are visible, its physicians have made and do make such errors of treatment, in the disorders of the soul which is invisible and its remedies scarce attainable, what medicine will avail?"

"It was the effect of the grace of God that I found no capable minister; otherwise people would have considered my measures had been devised by him."

"On the day when the Almighty wills that my life should cease, I also would not further prolong it."

"My constant prayer to the Supreme Giver is that when my thoughts and actions no longer please Him, he may take my life, in order that I may not every moment add to His displeasure."

"The solution of difficulties depends on the assistance of God, and the evidence of the latter is the meeting with a wise spiritual director. Many persons through not discovering such a one have their real capabilities obscured."

"One night my heart was weary of the burden of life, when suddenly, between sleeping and waking, a strange vision appeared to me, and my spirit was somewhat comforted."

"Whosoever with a sincere heart and in simplicity of mind follows my institutes will profit, both spiritually and temporally, to the fulfillment of his wishes."

"The source of misery is self-aggrandizement and unlawful desires."

"The welfare of those who are privileged to confidential counsel at the court of great monarchs has been said to lie in rectitude and loyalty; no self-interest or mercenary motive should intervene; and especially in times of the royal displeasure, if no conciliatory language will avail, they should be silent."

"A special grace proceeds from the sun in favors of kings, and for this reason they pray and consider it a worship of the Almighty; but the short-sighted are thereby scandalized."

"How can the common people possessed only with the desire of gain, look with respect upon sordid men of wealth. From ignorance these fail in reverence to this fountain of light, and reproach him who prays to it. If their understanding were not at fault how could they forget the Surah beginning "By the sun," and c."

"The reason why the hair of the head turns grey first is because it comes before the beard and the whiskers."

"I have heard no good reason from the Hindus for the sounding of the gong and blowing the conch at the time of worship. It must be for the purpose of warning and recollection."

"When it rains, if light breaks from the west, the air will clear, for, radiance from the quarter whence darkness proceeded is a harbinger of light."

"The reason why under the Muhammadan law an inheritance seldom passes to the daughter notwithstanding that her helplessness seems deserving of greater consideration, is that she passes to her husband's house and the legacy would go to a stranger."

"The meat which is nearer the bone is sweeter because it contains the essence of the nutriment."

"Fruit in a plentiful season is never so luscious and sweet, because the source of supply of these qualities is proportionately subdivided."

"The tales of the ancients, that, in certain places of worship fire from heaven was present, were not credited, and it was held to be exaggeration, it being known that a mirror or the sun-crystal[10] being held to the sun would produce fire."

"For all kinds of animals there is a fixed breeding season. Man alone is constantly under the impulse of desire to that end. Indeed, by this

[10] The Surya-kanta or 'sun-loved' a sunstone or crystal, cool to the touch and supposed to possess fabulous properties because, like a glass lens, it gives out heat when exposed to the rays of the sun. Monier-williams. S. D.

providential multiplication of the species a greater stability is given to the bond of union upon which the foundation of social life depends."

"Eating anything that dies of itself is unlawful. There is a natural repugnance to it."

"A man's is being eaten after he has been killed is the just requital of his own baseness."

"The prohibition against touching anything killed by the act of God, the cause of which is unknown, is in order to respect the dead."

"Blood contains the principle of life. To avoid eating thereof is to honors life."

"The birth of ugliness from beauty is not surprising indeed, if a man were to beget a different kind of animal, it would not be extraordinary, for as a matter of fact forms are designed from concepts, and since these are capable of being imagined, their production may take place."

"If the love of the husband prevail, he but idolizes his own partialities and begets a daughter; if the wife has the stronger affection, the image of her husband is oftenest present, and a boy appears."

"As to what is said in ethical treatises, that an enemy should not be despised, the meaning is that since friendship and enmity are but phantasms of the divine dispensation, one should overlook the intervening enemy and view the Deity beyond."

"Many a disciple surpasses his master, and his attitude to him must be one of deference and submission."

“Miracles occur in the temples of every creed. This is the product of mental enthusiasm, for the truth can be but with one.”

“A gift is the deposit of a pledge and a lightening of an obligation from a former debt.”

“The origin of wearing the sacred thread (in a Brahman), is that in ancient times they used to pray with a rope round their necks, and their successors have made this a religious obligation.”

“In Hindustan no one has ever set himself up as a prophet. The reason is that pretensions to divinity have superseded it.”

“When any one is said to be of a good, or low origin, what is meant is, that one of his ancestors attained to spiritual or temporal distinction, or was known to fame from connection with some city or profession. It appears to me that good breeding should involve good works.”

“It is said that greater friendship is shown by the receiver of a gift than by the giver; but I consider that in the giver it is personal. He does not give but to a worthy object, and this can be evidenced in a receiver only by a gift.”

“In Hindu treatises it is said that, in the acquisition of learning or of wealth, a man should so toil s though he were never to grow old, or to die. But since the luxurious, from fear of these two sources of despair, withhold themselves from labour, it appears to me that in acquiring these twin needs of a worldly career, we should regard each morrow as our last, and postpone not the work of one day to the next.”

“The Hindu philosopher says that in the garnering of good works, one should have death constantly in view, and, placing no reliance on youth and life, never relax one’s efforts. Bu to me it seems that in the pursuit of virtue, the idea of death should not be entertained, so that freed from hopes and fears, we should practice virtue for the sake of its own worth.”

“It is strange that in the time of our Prophet no commentaries on the Quran were made, so that differences of interpretation might not afterwards arise.’

“(Regarding the saying), “the love of a cat is a part of religion,” if the noun of action is not in construction with the agent, as Mir Sayyid Sharif put it to escape a difficulty, it would not be humane to avoid a cat or regard it with repugnance. The silence of Maulana Sazdu’ddin from this (obvious) reply is, therefore, not to be defended.[11]”

‘What the ancients have said, viz., that the heaviest trials fall on the prophets, next upon the saints, and by proportionately diminishing degrees upon the virtuous, does not commend itself to me. How can the elect of God

[11] The ephemeral controversies of the Court which Abu’I Fazl seemed to regard as enduring to all time, and of which the subjects and actors have long been forgotten, are to be elucidated only on conjecture. The saying alluded to in the text appears to be a parody on the tradition. ‘the love of country is a part of religion’. Some traditions regarding the cat have been preserved and will be found in the Hayat u’I Hayawan [Vita animalium: auctore Shaykh Kamalu’ddin Mhd. B-Ben Isa Demiri, anno, A.H. 808 (A.D. 1405) mortuo. Haj. Khal]. One of these, on the authority of Salman al-Farsi, says that the Prophet gave an admonition respecting the cat.” i.e., its humane treatment. Abu Hurayrah, the well-known companion, who received his epithet (father of the kitten), on account of having always a kitten with him, narrated a tradition that a woman was punished in hell for maltreatment of a cat. Ayesha asked him if this was true. He replied, he had heard it from Mumammad’s own lips. She rejoined that a Muslim woman could not have been so punished on account of a cat, and that the culprit was an infidel. He should, therefore, be careful how he repeated these traditions.

be thus punished?" Some of the philosophers suggested to his Majesty that these were trials sent by God. The king was amazed and said: "How can trials be justifiable by one who knows both what is hidden and what is manifest?"

"Every sect favorably regards him who is faithful to its precepts and in truth he is to be commended. If he be engaged in worldly pursuits he should pass his days in righteousness and well-doing, and a garnering the needs of the time; and if of a retired habit, he should live in warfare with himself and at peace with others, and regard praise and blame indifferently."

"Some are of opinion that the greater the number of intermediaries between him that seeks the truth and him that has reached it, the more the grace of God abounds. But this is not so: rather the attainment thereto is dependent on attrahent grace and good works."

"It is strange that the Imamis make beads of the earth of Karbala, and believe that it is mixed with the blood of the Imam (Husayn)."

"Whoever bestows his garments upon ignoble people, upon rope-dancers and buffoons, it is as though he went through their antics himself."

"He alone whose knowledge is superior in degree to that of the author of a work should make selections there from; otherwise it is not a choice of passages but showing his own merit."

"The legend of Alexander's stratagem against Porus[12] does not carry the appearance of truth. A man raised to power by the Almighty does not act in this manner especially when he thinks his end drawing near."

"One should write out a quatrain of Omar Khayyam, after reading an ode of Hafiz, otherwise the latter is like drinking wine without a relish."

"Men give the names of eminent men to their sons. Although it is done by way of good augury, it is not respectful. And what is most curious is that this is chiefly practiced by theologians who do not believe in metempsychosis; while the Hindus who do, refrain from it."

"It is a remarkable thing that men should insist on the ceremony of circumcision for children who are otherwise excused from the burden of all religious obligations."

"If the reason of the prohibition of swine (as food), be due to its vileness, lions and the like should be held lawful. Burial of the dead is an ancient custom: otherwise why should a traveler on the road of annihilation bear a load. He should return as he came."

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[12] The stratagem is thus described by Firdausi: Now spies arrived from Hind before the world-lord and informed him at large of how the elephant contendeth in warfare! "It will rout two miles of horse. No cavalier will dare to face that beast." Then the Shah (Alexander) assembled all the master smiths... who made a horse with saddle and rider complete, of iron... They charged it with black naphtha, and then ran it on wheels before the troops... He bade to make a thousand such and more...

Now when Sikandar was approaching Fur (Porus), eager for the fray the warriors advanced. They lit the naphtha in the steeds: Fur's troops were in dismay. The naphtha blazed: Fur's troops recoiled because those steeds were iron. Whereat the elephants when their own trunks were scorched fled likewise... Thus all the Indian host and all those huge high-crested elephants were put to flight. (Warner's translation of Shahnamah', vi. 115-116. Jarrett entirely missed the context. J.S.)

"One day Qalij Khan brought a register to His Majesty, and said, "I have named this the Khulasatu'I Mulk" (the Abstract of the Kingdom). His Majesty replied: "This name would more befit a province, a district, or a town: it should rather be called Haqiqatu'I Mulk" (the Real State of the Kingdom). Qalij Khan then represented his own capacity in affairs. Others who were present raised objections: During the discussion his knowledge of mathematics was questioned; on this he was silent, but introduced religion. His majesty uttered the following verse:

"Hath earth so prospered 'neath thy care,

That heaven thy vigilance must share?"

On one occasion at a meeting for philosophical discussion, one of the poets in the assembly uttered the following couplet:

"The Messiah his friend, Khizr his guide, Joseph

Riding at his rein,

Oh! would that my sun might meet with this honour."

His Majesty said "instead of 'my sun' if you read 'my knight', it would be more appropriate." Discerning judges were loud in applause.

One day the following quatrain of Mulla Talib Isfahani, in an elegy on Hakim Abu'I Fath and congratulatory on the arrival of Hakim Humam, was quoted in His Majesty's presence:

"My brothers in their love what concord show!

This homeward comes are that doth journeying go.

That went, and behind him all my life he bore,

This comes, and coming doth that life restore."

His Majesty remarked that the word dumbalah (behind) was prosaic and it would better run, ze raftanash (from his going). The critics much approved.

"Solicitation is reprehensible from every man, especially from those who are disinterested and of lofty spirit for these defile not their hands save with necessities: therefore no solicit of them is to dishonor oneself and them."

"Difference of capacity is the cause of the continuance of mankind."

"The truth is such that where it reaches the ear it must penetrate the heart. Conviction is irresistible."

"The severe illness of the young suggests the doctrine of metempsychosis."

"What the divine books say, that great sinners in ancient times were changed into monkeys and boars, is credible."

"If the idea were merely that souls were transfused into a few determinate shapes, this would be unworthy; but if the strange workings of destiny joined them to mineral, vegetable and animal life in serial progression till they were exalted to a high dignity, where would be the wonder?"

"Some of the ancients say that the punishment of each continues through various bodies, and that a body is thus prepared for the expiration of each period – this corroborates the above."

"To light a candle is to commemorate the (rising of the) sun. To whomsoever the sun sets, what other remedy hath he but this."

"Te darkness of smoke is due to the absence of light and its own worthlessness."

"When the time of death approaches, certain sadness supervenes, and when it is at hand, faintness also ensues. This, indeed, indicates that the gift and withdrawal of life are in the hands of God."

"The ear is the sentinel of the voice. When the speaker becomes deaf he loses the need of speech."

"Although thieving is worse than fornication when it is practiced when the faculties are first developed and in old age, yet because the commission of the latter grave sin contaminates another as well as the doer thereof, it involves the greater guilt."

"It is not right that a man should make his stomach the grave of animals."

"The killing of an innocent man is benevolence towards him, for it is committing him to the mercy of God."

"The authority to kill should be his who can give life, and he who performs this duty at the command of right judgment, does so with reference to God. When an inheritance passes, while a daughter is alive, to the

brother's child, it having been transmitted to the deceased from his father, there is justification, otherwise how can it be equitable?"

"A city may be defined to be a place where artisans of various kinds dwell, or a population of such an extent that a voice of average loudness will not carry at night beyond the inhabited limits."

"A river is that which flows throughout the whole year."

"Kingdoms are divided from each other by rivers, mountains, deserts or languages."

"In cold climates such as Kabul and Kashmir guns should be made thicker than ordinary, so that dryness and cold may not crack them."

"A moderate breeze differs relatively in reference to a mill or a ship, but what is commonly understood by this term is one of sufficient force to extinguish a lamp."

"The interpretation of dreams belongs to the world of augury. For this reason it is established that none but a learned man of benevolent character should be entrusted to draw a good omen there form."

"Rhetoric consists in the language being commensurate with the capacity of the hearer, and that a pregnant meaning shall be pithily expressed in a manger intelligible without difficulty. Eloquence requires the delivery to be accompanied with elegance of diction."

"One moral may be drawn from the instances of the ruler of Egypt (Pharaoh), and Husayn Mansur (Hallaj) namely that presumptuous

Contemplation of one's self (khud-bini) and gazing at God (Khuda-bini) are things different from each others.

"Dignity is the maintenance of one's station."

"A wise man was asked the reason of the long life of the vulture and the short existence of the hawk. He replied, "The one injures no animal, and the other hunts them."

"On this His Majesty remarked, "If the penalty to a hawk that lives only on animal life, be a brief span of existence, what shall happen to man who notwithstanding abundant provision of other kinds, does not restrain himself from meant? Nevertheless, the thought that harmless animals are lawful and animals of prey forbidden food, is full of suggestion."

"Learning to speak comes from association, otherwise men would remain inarticulate. But when the experiment was tried it was shown through the instance of a dumb man, how, though silent in such a case, he might make himself understood by strangers."

"Whosoever imprecates upon another the vengeance of God will not be heard. It was this reflection that comforted a man who had been cursed by others."

"Since I used nitre (for cooling water), I recognize the rights of salt (fidelity) in water also."[13]

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[13] This is a conceit on the well-known eastern duty of protecting a guest who has eaten of one's salt. This protection does not extend to the offer of water, but the use of nitre gives water this salt and its consequent rights.

"When I came to India I was much attracted by the elephants, and I taught that the use of their extraordinary strength was a prognostication of my universal ascendancy."

"Men are so accustomed to eating meats that were it not for the pain; they would undoubtedly fall to on themselves."

"Would that my body was so vigorous as to be of service to eaters of meat who would thus forego other animal life, or that as I cut off a peace for their if Would that it were lawful to eat an elephant, so that one animal might avail for many.

Were it not for the thought of the difficulty of sustenance, I would prohibit men from eating meat. The reason why I do not altogether abandon it myself is, that many others might willingly forego it likewise and be thus cast into despondency.

From my earliest years, whenever I ordered animal food to be cooked for me, I found it rather tasteless and cared little for it. I look this feeling to indicate a necessity for protecting animals, and I refrained from animal food.

Men should annually refrain from eating meat on the anniversary of the month of my accession as a thanksgiving to the Almighty, in order that the year may pass in prosperity.

Butchers, fishermen and the like who have no other occupation but taking life, should have a separate quarter and their association with others should be prohibited by fine.[14]

A merchant was approaching his end and his four sons were about to quarrel over his property. He directed them with due counsel, and told them that he had providently bequeathed them equal portions and had left these, one for each, in the four corners of this

[14] This was the old Hindu and Buddhistic rule. Fa Hien observed in North India in 399 A.D. – "Only the Chandalas are fisherman and hunters, and sell flesh meat ... They are [held to be] wicked men, and live apart from others", [Legge's tr. Ch. Xvi.] Yuan Chwang noticed the same practice about 629 – "Butchers, fishers, dancers, executioners and scavengers and so on, have their abodes outside the city". [Bk. II 5, Beal's tr. 1.74] J.S.

house, and that when he died they were to take their several shares. When his instructions were carried out, one found gold, another grain, and the other two paper and a bone respectively. No comprehending this they began to make a disturbance. The King of Hindustan, Salivahana, thus interpreted it: "By the bone is meant that cattle should be demanded (by its holder) of the first, and by the paper, a money credit of the second". When the whole was computed, the shares were thus found to be equal.

Hasan Sabbah[15] was once on journey by sea with a numerous company. Suddenly a storm arose, and consternation seized the people. He himself was cheerful, and when questioned thereon, he announced to them that [P.242] they would be saved. On reaching land all of them were assured that the future was revealed to him. In point of fact he was undisturbed through his assurance that the will of God could not be altered, and his announcement of the good tidings of their security was caused by this reflection, that if they were drowned no one could save them: had they thought otherwise they would have taken to (vain) supplication.

Ali, called also Kharwa[16], used to say that he had seen a person in Balia whose upper part consisted of two bodies, each possessing a head, eyes, and hands, with but a single body below. The man was married, and a jeweler by profession.

In the year [968 A.H. = 1560 A.D.] that Bayram Khan received permission to depart for Hijar, a hunting leopard killed a doe near, Sikandrah; a live young one was taken from its stomach. I separated the flesh from the bone myself and gave the leopard its fill. In doing so something pricked my hand. I thought it was a piece of a bone. Were carefully examined, an arrow-head was found in its liver. The doe must have been hit by an arrow when young, but

[15] This was the famous chief of the Persian Ismailians and known in the history of the Crusades under the name of the 'Old man of the Mountair, by which is meant, the mountainous district from Isfahan to Zanyin, Qazwin. Hamadan, Dinawar and Qirmisin, Found of the sect of Assassins. The legends about his life are given in Sargudhasi Sayidna. He ended his reign and life in A.H. 518 (A.D 112.8 Enc. Isl. li. 276.

[16] For Kharwa the variants are *Khaura* and *Hara*, and for *Balia, Malibar* and *Balisa*. For the man's name I suggest *Kharjah* "a certain man whose mother is called *amm-i-Kharijah* who is also the mother of several tribes". [Richardson's Dict.] and for the place *Malibar*. This would make Akbar's story an Arab sailor's yarn like those given in *Ajaib-ul-Hind* about India's coastal ports.

by God's protection it had touched no vital part, and did not hinder the animal from waxing strong and becoming pregnant.

A mouse will take an egg in its paws and lie on its back, while the others seize him by the tail and drag him into his hole. It will also give a twist to its tail while inserting it into a bottle and draw out opium or whatever else may be inside. There are many such instances of their ingenuity.

If a wolf opens its mouth impelled by desire to seize its prey, it can do so. At other times it cannot open it however much it may wish. When captured it utters no sound.

The difference between stone and salt lies in this, that the former is not soluble in water and the latter dissolves.

Once in a game preserve, a tame deer had a fight with a wild one. The latter was cleverly caught. Some of the spectators quoted the following line: "We have never seen any one who could overtake a deer by running". The point was thus explained, that *ahu* "a deer" in Persian, means also "a defect", and this is not (required to be) secured by pursuit and effort.

The marriage of a young child is displeasing to the Almighty, for the object which is intended is still remote, and there is proximate harm. In a religion which forbids the re-marriage of the widow, the hardship is grave.

Marriage between those who are not related is commendable in order that heterogeneity may become kinship, and between relations, the more remote the affinity the closer is the concord; and what has been recorded of the time of Adam, viz., that as sons and daughters were born to each, the son of one was given to the daughter of another, sustains this view.

As to the kinship between cousins being within the permitted degrees under the Muhammadan law, this was established in the beginning and was analogous to (the custom in) the time of Adam's birth.

It is improper to consort with a woman when moved by concupiscence, or with one too young or too old – most of the latter cease to be capable of child-bearing after 55 – with a

pregnant woman or a female during her monthly course... [Reason given in every case, not translated. Akbar followed the Hindu maxim, *putrarthe Kriyate varya*, i.e., a man t`kds a whfe vith the object of h`vhng rons. J.Rarkar

To seek more than one wife is to work one's own undoing. In case she were barren or bore no son, it might then be expedient.

Had I been wise e`rlier, H votld have t`ke no wom`n frol my ovn khnfdnm into my sdr`glin, fnr mx rubjdcts are tn le in thd pl`ce nf children.

The womdn of Hindustan rate thehr dear lives at a slender price.

It is an ancient custom hn Hindustan for a woman to burn herself however unwilling she may be, on her husband's death and to give her priceless life with a cheerful countenance, conceiving it to be a means of her husband's salvation.

It is a strange commentary on the magnanimity of men that they should seek their deliverance through the self-sacrifice of their wives.

A monarch is a pre-eminent cause of good. Upon his conduct depends the efficiency of any course of action. His gratitude to his Lord, therefore, should be shown in just government and due recognition of merit; that of his people, in obedience and praise.

The very sight of kings has been held to be a part of divine worship. They have been styled conventionally the shadow of God, and indeed to behold them is a means of calling to mind the Creator, and suggests the protection of the Almighty.

Sovereignty is a supreme blessing, for its advantages extend to multitudes, and the good works of such as have attained to true liberty of spirit also profit these.

A monarch should not himself undertake duties that may be performed by his subjects. The errors of others it is his part to remedy, but his own lapses who may correct?

Sovereignty consists in distinguishing degrees of circumstance and in meting out reward and punishment in proportion thereto. This quality of appreciation adds dignity to the pursuit of happiness and is the chief source of success.

What is said of monarchs, that their coming brings security and peace, has the stamp of truth? When minerals and vegetables have their peculiar virtues, what wonder if the actions of a specially chosen man should operate for the security of his fellows. [p.244]

In the reciprocity of rule and obedience, the sanctions of hope and fear are necessary to the well-ordering of temporal government and the illumination of the interior recesses of the spirit; nevertheless a masterful will, never suffering the loss of self control under the dominance of passion, should weigh well and wisely the measure and occasion of each.

Whoever walks in the way of fear and hope, his temporal and spiritual affairs will prosper. Neglect of them will result in misfortune.

Idleness is the root of evils. The duty of one who seeketh his own welfare is to learn a profession and practice it. It is imperative in prefects never to be remiss in watchfulness.

The anger of a monarch like his bounty, is the source of national prosperity.

Tyranny is unlawful in everyone, especially in a sovereign who is the guardian of the world.

Divine worship in monarchs consists in their justice and good administration: the adoration of the elect is expressed in their mortification of body and spirit. All strife is caused by this, that men neglecting the necessities of their state, occupy themselves with extraneous concerns.

A king should abstain from four things: excessive devotion to hunting; incessant play; inebriety night and day; and constant intercourse with women.

Although hunting suggests many analogies of kingly action, certainly the foremost of them is that the granting of life [to the doomed] becomes a habit.

Falsehood is improper in all men, and most unseemly in monarchs. This order is termed the shadow of God, and a shadow should throw straight.

Superintendents (*Daroghahs*) should be watchful to see that no one from covetousness abandons his own profession.

Shah Tahmasp, king of Persia, one night forgot a verse. His torchbearer quoted it. He punished the speaker somewhat, and said. "When a menial takes to learning he does so at the expense of his duties".

A king should not be familiar in mirth and amusement with his courtiers.

A monarch should be ever intent on conquest, otherwise his neighbours rise in arms against him. The army should be exercised in warfare, lest from want of training they become self-indulgent.

A king should make a distinction in his watch over the goods, the lives, the honour and the religion of his subjects. If those who are led away by greed and passion will not be reclaimed by admonition, they must be chastised.

He who does not speak of monarchs for their virtues will assuredly fall to reproof or scandal in their regard.

The words of kings resemble pearls. They are not fit pendants to every ear.

The above saying shows the ideas of justice .These were his thought process on which his justice was based.

Father Monserrate's also points out the administration of Akbar justice which is following;

"In accordance with Musalman practice, cases are decided by a double process before two Judges. However by the King's direction all capital cases and all really important cases also, are conducted before him. He is sincerely anxious that guilty should be punished without malice indeed, but at the same time without undue leniency. Hence in the cases in which he himself acts as a Judge. The guilty are, by his own directions, not punished until he has given orders for the third time that this small be done. During a campaign, twelve deserters to the enemy were captured in an

ambush and brought before the king. He pronounced judgement upon them; some were to be kept in custody in order that their case might be more thoroughly investigated whilst some were convicted of treachery and desertions, and handed over for execution. One of these latter, as he was being carried off by the executioners, begged for a chance to say something. 'O King', he said, 'order me not to the gibbet, for nature has bestowed upon me marvelous power in a certain direction.' "Well,' said the king, 'in what direction does you thus excel O miserable wretch?' 'I can sing beautifully.' 'Then sing.' The wretched fellow began to sing in a voice so discordant and absurd that every one began to laugh and murmur and the king himself could scarcely control his smiles. When the guilty man perceived this, he put in, 'Pardon me this poor performance, O King; for these guards of yours dragged me along so roughly and cruelly on a hot and dusty road and pummeled me so brutally with their fists, that my throat is full of dust and voice so husky that I cannot do myself justice in sensing. The king rewarded this witty saying with such signal grace that for the sake of one man he pardoned both, the fellow himself and his companions.

Further he says that the following were the ways in which had guilty were punished. Those who had committed a capital crime were rushed by elephants, impaled or hanged. Seducers and adulterers are either strangled or gibbeted. The king had such a hatred of debauchery and adultery that neither influence nor entreaties nor would the great ransom which was offered induce him to pardon his chief trade commissioner, who, although he was already marred, had violently debauched a well-born Brahma girl. The wretch was, by the king's order, remorselessly strangled.

A judgement was delivered only verbally and was not recorded in writing. Ordinary criminals are kept under guard in irons but not in prisons. Princes sentenced to imprisonment were sent to the jail at Gwalior, where they rot away in chains and filth. Noble offenders were handed over to other nobles for punishment, but the baseborn either to the captain of the dispatch runners, or to the chief executioner. This latter official was equipped even in the palace and before the king with many instruments of punishment, such as leather thongs, whips, bow strings fitted with sharp spikes of copper, a smooth block of wood used for pounding the criminal's sides or crushing to pieces his skull, scourges in which were tied a number of small balls studded with sharp bronze nails. However, no one was actually punished with these instruments, which seem to be intended rather inspire terror than for actual use. For the same reasons, various kinds of chain manacles, handcuffs and other irons were hung up on one of the palace gateways, which were guarded by the aforementioned chief executioner.[17]

Emperor used to inflict two kinds of punishment, viz., of death and mutilation of some limb. But the following instructions meant for the guidance of those who were to deputise for the king in the task of administering justice may be held to describe Akbar's own methods. He should strive to reclaim the disobedient by good advice. If that fails, let him be punished with reprimands, threats, imprisonment, stripes or even amputation of limbs, but he shall not take away life till after the most mature deliberation. Those who apply for justice let them not be inflicted with delay and expectation. Let him shut his eyes against offences and accept the excuse of the penitent. Let him object to one on account of his religion or

[17] Commentary of Father Monserrate pp. 209-10.

sect."[18] Further he says that in judicial investigations, he should not be satisfied with witnesses and oaths, but pursue them by manifold inquiries, by the study of physiognomy and the exercise of foresight; nor laying the burden of it on others, live absolved from solicitude."[19]

Abul-Fazl justifies the appointment of law officers in this manner "Although it be the immediate duty of a monarch to receive complaints and administer justice; yet seeing that it is not possible for one person to do everything, it necessarily follows that he must delegate his power to another."[20]

. Abul-Fazl continues that that delegate must not be satisfied with witnesses and oaths but make diligent investigation because it is very difficult to come at truth without painful search and minute enquiry. Considering the depravity of human nature, he ought not to place much reliance on deposition. Divesting himself of partiality and avarice, let him distinguish the oppressed from the oppressor; and when he was discovered the truth, act accordingly. He shall begin with asking the circumstances of the case and then try it in all its parts. He must examine each witness separately upon the same point and write down their respective evidences. Since these objects could only be effectually obtained by deliberations, intelligence and deep reflection, they will sometimes require that the cause should be tried again from the beginning and from the similarity or disagreement, he may be enabled to arrive at the truth.

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[18] Ain-i-Akbari, Vol. II, translated by Jarret, pp. 37.28. Also Gladwin, p. 254.

[19] Ain-i-Akbari, AIn I Vol. II, p. 37

[20] Ain-i-Akbari, translated by Gladwin, p. 300, cf. AIn VOl. II, Ain III, p. 41, translated by Jarrett.

A letter of instructions to the Governor of Gujrat, preserved in the Mirat-i-Ahmadi, restricts his punishments to putting in irons, whipping and death, enjoining him to be sparing in capital punishments, and, except in cases of dangerous sedition, to inflict none until he has sent the proceedings to court and received the Emperor's confirmation.[21] The Mirat, however, lies down that capital punishment was not to be accompanied with mutilation or other cruelty.[22]

The manner in which the Emperor spent his daily time is thus described in the Ain:

"The success of the three branches of the government, and the fulfillment of the wishes of the subjects, whether great or small, depend upon the manner in which a king spends his time. The care with which His Majesty guards over his motives, and watches over his emotions, bears on its face the sign of the Infinite, and the stamp of immortality; and though thousands of important matters occupy; at one and the same time, his attention, they do not stir up the rubbish of confusion in the temple of his mind, nor do they allow the dust of dismay to settle on the vigour of his mental powers, or the habitual earnestness with which His Majesty contemplates the charms of God's world. His anxiety to do the will of the Creator is ever increasing; and thus his insight and wisdom are ever deepening. From his practical knowledge, and incapacity for everything excellent, he can sound men of experience, though rarely casting a glance on his own ever extending excellence. He listens to great and small, expecting that a good thought, or the relation of a noble deed, may kindle in his mind a new lamp of wisdom, though ages have passed without his having found a really great man. Impartial statesmen, on seeing the sagacity of His Majesty, blotted out the book of their own wisdom, and commenced a new leaf. But with the magnanimity which distinguishes

[21] Mirat-i-Ahmadi, p. 174

[22] Ibid, p. 174

him, and with his wonted zeal, he continues his search for superior men and finds a reward in the care with which he selects such as are fit for his society.

Although surrounded by every external pomp and display, and by every inducement to lead a life of luxury and ease, he does not allow his desires, or his w rath, to renounce allegiance to Wisdom, his sovereign – how much less would he permit them to lead him to a bad deed! Even the telling of stories, which ordinary people use as a means of lulling themselves into sleep, serves to keep His majesty awake.

Ardently feeling after God, and searching for truth, His Majesty exercises upon himself both inward and outward austerities, though he occasionally joins public worship, in order to hush the slandering tongues of the bigots of the present age. But the great object of his life is the acquisition of that sound morality, the sublime loftiness of which captivates the hearts of thinking sages, and silences the taunts of zealots and sectarians.

Knowing the value of a lifetime, he never wastes his time, nor does he omit any necessary duty, so that in the light of his upright intentions, every action of his life may be considered as an adoration of God.

It is beyond my power to describe in adequate terms His Majesty's devotions. He passes every moment of his life in self-examination or in adoration of God. He especially does so at the time, when morning spreads her azure silk, and scatters abroad her young, golden beams; and at noon, when the light of the world-illuminating sun embraces the universe, and thus becomes a source of joy for all men; in the evening when that fountain of light withdraws from the eyes of mortal man, to the bewildering grief of all who are friends of light; and lastly at midnight, when that great cause of life turns again to ascend, and to ring the news of renewed cheerfulness to all who, in the melancholy of the night, are stricken with sorrow. All these grand mysteries are in honour of God, and in adoration of the Creator of the world; and if dark-minded, ignorant men cannot comprehend their signification, who is to be blamed, and whose loss is it? Indeed, every man acknowledges that we owe gratitude and reverence to our

benefactors; and hence it is incumbent on us, though our strength may fail, to show gratitude for the blessings we receive from the sun, the light of all lights, and to enumerate the benefits which he bestows. This is essentially the duty of kings, upon whom, according to the opinion of the wise, this sovereign of the heavens sheds an immediate light.[23] And this is the very motive which actuates His Majesty to venerate fire and reverence lamps.

But why should I speak of the mysterious blessings of the sun, or of the transfer of his greater light to lamps? Should I not rather dwell on the perverseness of those weak-minded zealots, who, with much concern, talk of His Majesty's religion as of a deification of the Sun, and the introduction of fire-worship? But I shall dismiss them with a smile.

The compassionate heart of His Majesty finds no pleasure in cruelties, or in causing sorrow to others; he is ever sparing of the lives of his subjects, wishing to bestow happiness upon all.

His Majesty abstains much from flesh, so that whole months pass away without his touching any animal food, which, though prized by most, is nothing thought of by the sage. His august nature cares but little for the pleasures of the world. In the course of twenty-four hours he never makes more than one meal. He takes a delight in spending his time in performing whatever is necessary and proper. He takes a little repose in the evening, and again for a short time in the morning; but his sleep looks more like waking.

His Majesty is accustomed to spend the hours of the night profitably; to the private audience hall are then admitted eloquent philosophers and virtuous Sufis, who are seated according to their rank and entertain His Majesty with wise discourses. On such occasions His Majesty fathoms them, and tries them on the touch-stone of knowledge. Or the object of an ancient institution is disclosed, or new thoughts are hailed with delight. Here young men of talent learn to revere and adore His Majesty,

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[23] Vide Abu'l-Fazl's Preface, pp. iii and 49.

and experience the happiness of having their wishes fulfilled, whilst old men of impartial judgment see themselves on the expanse of sorrow, finding that they have to pass through a new course of instruction.

There are also present in these assemblies, unprejudiced historians, who do not mutilate history by adding or suppressing facts, and relate the impressive events of ancient times. His Majesty often makes remarks wonderfully shrewd, or starts a fitting subject for conversation. On other occasions matters referring to the empire and the revenue are brought up, when His Majesty gives orders for whatever is to be done in each case.

About a watch before daybreak, musicians of all nations are introduced, who recreate the assembly with music and songs, and religious strains; and when four gharis are left till morning His Majesty retires to his private apartments, brngs his external appearance in harmony with the simplicity of his heart, and launches forth into the ocean of contemplation. In the meantime, at the close of night, soldiers, merchants, peasants, trades people, and other professions gather round the place, patiently waiting to catch a glimpse of His Majesty. Soon after daybreak, they are allowed to make the kornish (vide A in 74). After this, His Majesty allows the attendants of the Harem to pay their complements. During this time various matters of worldly and religious import are brought to the notice of His Majesty. As soon as they are settled, he returns to his private apartments and reposes a little.

The good habits of His Majesty are so numerous that I cannot adequately describe them. If I were to compile dictionaries on this subject they would not be exhaustive."

Akbar encouraged the use of trial by ordeal in the Hindu fashion. He possessed an intellect so acute and knowledge of human nature so profound

that when he undertook judicial duties in person, his efforts to do substantial justice in a summary fashion probably met with considerable success.[24]

The reason why Akbar endeared himself to his people was that he administered even-handed justice to all, irrespective of caste and creed. He was the foundation of justice. His court was not merely the highest appellate court, it was also the court of first instance. The Emperor took great pleasure and pride in impartially deciding cases that came before him. It was the ambition of the King to serve the people and in serving them serve God before Whose Throne the King and the ryots must meet as equals. In his court the Eastern ideal of justice came very near being realized. This Eastern ideal fostered a feeling of goodwill and complete confidence between the rulers and the ruled.

The following is the full account of the incidents of justice which is mentioned by Abul Fazal in the Akabarnama;[25]

1. THE PUNISHMENT OF ADHAM KHAN BY THE JUSTICE OF THE SHAHINSHAH.

"When the world-adorning Deity wills the bestowal of greatness on a unique one and exalts him to the high office of sovereignty He, in the first place, gives him far-seeing reason to be ever his unvarnished counselor. After that He bestows on him wide forbearance so that he may bear the brunt of so many of the world's disagreeable and that he may, by the help thereof, refrain from dropping the thread of deliberation when he beholds such evils.

[24] Akbar, the Great Mughal, by Vincent Smith, p. 34

[25] Fazl,Abul,Akbarnama,Translated from the Persian by H.Beveridge,two Vols in one,vol.1 -11,Low price publications,Delhi,2007,pp,268-282.

Then he gives him the priceless jewel of justice, so that he can place the familiar friend and the stranger in the same balance and can comprehend the affairs of creation's workshop (the world) without being weighted by personal considerations, and can establish a source of instruction within his holy souk. Many sages who have made no enter in testing knowledge have yet at the time for action become timid owing to the want of a wide understanding and let go the reins of carefulness and so have fallen off in the arena of examination. When know ledge and endurance are suitably developed the marks of justice are evolved, without anxiety or delay, from the just temperament. Thanks are to God! These glorious excellencies and splendid qualities are innate and constitutional in His Majesty the Shashinshah and apring from the plenteous house of Divine wisdom, uncontaminated 1 by outward teaching or the decoration of human instruction. But that knower of the Creator's secrets keeps himself, for his own designs and reasons, under the veil of concealment, and spends his life in the garb of obscurity. Nor is he content with ever so many veils, but is always fashioning others in order that acute observer cannot penetrate them. But the Divine decree is paramount, and when God wills that mankind should become acquainted with his intrinsic beauty, what avails the screen? Of necessity his faco must be unveiled and his beauty adorn the world so that those who are afar off from fortune's neighbourhood may reach the palace of devotion and the chief seats in the court of 174 acknowledgment. What happened in Agra, the capital, is an example of the majesty and extensiveness of the justice of His Majesty the Shahinshah.

The account of this affair is that Adham Khan, the younger son of the cupola of chastity Maham Anaga, had neither understanding nor good

conditions. He was intoxicated by youth and prosperity and was countinually envious of Shamsu-d-din Muhammad the Ataga Khan. Mun'im Khan, the Khan-Khanan, also suffered much from this malady and used to throw out dark hints such as the generality could not comprehend and instigate Adham Khan to strife and intrigue. At length on the day of Isfandiyar 5 Khurdad, Divine month, corresponding to Saturday, 12 Ramzan, 969, 16th May, 1962, when the equability of Ardibihisht was still prevailing, an extra ordinary occurrence, which was far from equability, took place. On a court day Mun'im Khan, Ataga Khan, Shibabnd-din Ahmad Khan and other magnates were sitting in the royal hall and transacting public business, when Adham Khan suddenly entered in a riotous manner and attended by others more riotous than him. The members of the assembly rose up to do him honour and the Ataga Khan rose half-up. Immediately upon entering Adham Khan put his hand to his dagger and went towads the Ataga Khan. Then he angrily signed to his servant Khusham Uzbeg and the other desperadoes who had come with their loins girt up for strife saying: "Why do you stand still?" The wicked Khusham drew his dagger and inflicted a dangerous wound on the breast of that chief-sitter on the pillow of auspiciousness. The Ataga Khan was thoroughly amazed and ran towards the door of the hall. Immediately thereon Khuda Bardi came and struck him twice with a sword. That great man was martyred in the court-yard (salm) of the hall of audience. A loud cry arose in the palace on account of this outrage, and general horror was exhibited in that glorious abode. That doomed one in spite of his past audacity presumptuously advanced towards the sacred harem – to which may there be no access for the wicked – with evil intentions. His Majesty the Shahinshah had gone to sleep in the auspicions palace, but his fortune was awake. That black-fated one went up, sword in hand from the hall to the

terrace (suffa) which went round the palace (qusr) on all four sides, and was of the height of a man and a half. He tried to go inside, but Ni'amat the sunnnch, who was standing near the entrance (darbar), immediately shut the door and bolted it. And though the presumptuous is she, who was hastening to his death, spoke roughly to Ni'amat and bade him open the door, the latter did not do so. Those standing by the threshold had not the grace to inflict the punishment of his deed on that presumptuous and furious one at the beginning of his doings when he assailed the Ataga Khan. And what shall I say of their dumbfoundedness and cowardice when after forming such vain thoughts he tried to enter behind the curtains of fortune! Why did they not shed, his blood? Why did they not level him with ignominy's dust? If they had not courage for that, why did they not make a general rush and surround him? Even then, how can I suppose that among those present in the palace there was no one who was loyal? Apparently there was a design in the perfunctoriness of those people, v.z., that the perfect courage and justice of His Majesty the Shahinshah might be impressed on the minds of great and small, of the wise and the foolish!

In short, His Majesty was awakened by the dreadful clamonr and called for an explanation. As none of the women (pardagian, lit: veiled ones) knew of the affair he put his head outside of the palace-wall and asked what was the matter. Rafiq[26] Sahib-i-car mansab who was one of the old servants

[26] Rafiq is probably the valet mentioned in Jauhar, 110, in whose presence Akbar, then a boy of 13, consented to undress and bathe. It appears from Bayazid, see his list 75a, that Rafiq was a house born servant of Akbar's great-aunt Khanzads Begam. The expression sahib car munsab, "owner of four offices," may mean that he had served four generatious.

Bayazid 105a says Akbar wrapped his lungi round his loins and came out. He saw the body and aksed whose it was (it must have been dark then) and Rafiq told him.

of the palace mentioned the facts. When His Majesty heard the horrible tale he was amazed and made further inquiries. Rafiq pointed to the blood-stained corpse and repeated his statement. When His Majesty the Shahinshah saw the body he became nobly indignant. From a Divine inspiration he did not come out by the door where that demented wretch was standing and mediating evil, but by another way. As he was coming out, a servant of the seraglio put into his hands, without his asking for it, the special[27] scimitar. His Majesty took the scimitar and went on. When he had passed over one side of the terrace and had turned into another he saw that villain, and there issued from his holy dips the words "Son of a[28] fool why have you killed our Ataga? That presumptuous wretch hastened to seize His Majesty's hands and to say "Inquire and deign not deliberate! There has been (only) a little inquiry" (talash). What reproach shall I make about the spectators of this convicted liar the amount of reproach or contempt will fit their case!

At last His Majesty the Shahinshah withdrew his hands from his own sword and freed them from the grasp of that wicked one, and stretched out his arm to take Adham Khan's sword. Just then that outcast for all eternity withdrew his hand from His Majesty and turned it to his own sword. His Majesty withdrew his hand there from and struck him such a blow on the face with his fist that that wicked monster turned a summersault[29] and

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[27] There were thirty shamsher Khan, and one was sent daily (the text says monthly) to the barem, the old one being returned. Blochmann 109.

[28] Bacha-i-lada. Lada means also a bitch.

[29] The Iqbalnama has "he turned like a pigeon."

felldown insensible. Farhat[30] Khan and Sangram Husnak had the good fortune to be present. His Majesty angrily said to them, "Why do you stand gaping there? Bind this madman." They two and a number of others obeyed the order and bound him. The righteous order was given that the fellow who had out stepped[31] his place should be flung headlong from the top of the terrace. Those shortsighted men out of consideration (for Adham), than which inconsideration would have been a thousand times better, did not throw him down properly, and he remained half-alive. The order was given to bring him up again and this time they dragged him up by the hair and in accordam with orders flung him bheadlong so that his neck was broken, and his brains destroyed. In this way that blood-thirsty proflig ate underwent retribution for his actions. The fist of the Diving athlete of the world had made such a mark that those who did not know the facts thought that it were a mace-wound. Mun'im Khan Khan-Khanan and Shihabu-d-din Ahmad Khan, who were there, fled from the pilgrim-caravan moved towards Gujarat, and Timur Badakhahi and a number of officers escorted it. On account of the periods being unseasonable for the sea-journey the caravan halted in Ahmadabad.

One of the occurrences was that the far-seeing prince raised Khwaja Shah Mansur Shirazi, who was an adept at the mysteries of accounts, to the high office of Vizier. He had formerly been appointed one of the head-

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[30] B lochmann 440, Bayazid calls him Mihtar Sakhar and says that Humayun gave him the title of Farhad Khan.

[31] Apparently Akbar's idea in having Aaham Khan thrown over the terrace was to carry out the Muhammadan principle of retaliation. Adham had stepped up to a place where he had no business to be, and so his punishment was the being thrust back again. Aurangzib inflicted a similar punishment on his daughter's lover. The T. Alfi says the terrace or verandah (aicau) was 12 yards high.

officers[32] of the Perfumery department, but owing to his quickness and zeal (josh-i-rashid) he had disputes with Mosaffar Khan and was dismissed. After much ill-success he joined Mun'im Khan and when he came to court about the affairs of Bengal his abilities became conspicuous. When Mun'im Khan died, Rajah Todar Mal on account of questions about accounts imprisoned him and put chains on him. H.M. from his great appreciation of merit sent an order, summoning him to court. At this time, which was the beginning of the smiling of the Spring of dominion, Shah Mansur glorified the forehend of his fortune by prostration on the holy threshold, and without the recommendation of courtiers – which is what helps most men – and without experience – which the experts regard as the evidence for promoting servants – the weight and influence of the Khwaja increased. Though the wide capacity and abounding knowledge of H.M. are independent of the help of a minister (Dastur), and though the brilliance of the wisdom of this unique one of creation puts the ordinary servants of the Sultanate into the straits of inactivity yet from his appreciative power, and from his shutting his eyes to the shining of his own God-given beauty, he is ever searching for a good man (sara-i-adam) and continually expresses by words and acts his wish for such a choice man, and assigns to him the office of a living second soul and a third eye (to Akbar's own). But it is apparent that the incomparable Deity wills that the holy personality of the Shahinshah should come forth from retirement and seclusion, and that the disciplinary laws of mortals – which are fitted to be universal regulations, should come forth from him whom He himself hath made great, and that the world-illuminating

[32] I shraf-i-itriyat. Apparently his appointment was that of accountant to the department (Mushrif). See Blochmann 430.

beauty of the lord of the earth should be impressed on the hearts of small and great. If such a wise man of wide capacity and the unique of the unequalled court – such as H.M. is looking for – were found, a number of short sighted persons belonging to the world of formalism would adopt the injurious idea that those great laws emanated from this man's wisdom! Though the wise of the age do not see the propriety of the Unique one of God's having a Vizier, yet as H.M. observes the connection between spiritual and temporal things and preserves both of these high matters, he on the day of Gosh 14 Aban, Divine month, appointed the Khwaja to this high office. Although he possessed no share of the current sciences, yet he was at the head of the first-rate men of the age for excellence in speech and in action, and together with these qualities he had a wide capacity.

One of the occurrences was that when he encamped at the town of Mohi Shihabu-d-din Ahmad Khan, Shah Fakhru-d-din Mashhadi, Shah Budagh Khan, Muttalib Khan and the officers of the province of Malwa came and did observance. Each of them was the recipient of favours in accordance with the degree of his loyalty. For some days that spot was made illustrious by the Shahinshah, and the condition of the inhabitants was properly supervised. Bahadurs such as Ghazi Khan Badakhshi, Sharif K. Atka, Mujahid K. and Subhan Quli Turk were left in Mohi, and 'Abdu-r-Rahman son of Muyid Beg, and 'Abdu-r-Rahman the son of Jalalu-d-din Beg, and others were left in Madariya. Similarly, brave men were appointed to other places in order that whenever that wicked strife monger (Rana Partab) should come out of the ravines of disgrace he might suffer retribution. When the holy mind had disposed of the affairs of that region, he on the dayof Mihr 16 Azar, Divine month, proceeded by way of Banswala

(Banswara) towards Malwa. His whole wish was that the country might obtain justice by the blessing of his advent, and that the general community might, under the shadow of his graciousness obtain rest and repose.

One of the occurrences was that Qutbu-d-din K. and Rajah Bhagwant Das were censured. The brief account of this is that the lenders of the army of fortune had reached the abode of the Rana. As no trace could be found of that turbulent one, they hastily, and without orders, came to court on hearing of the approach of the royal standards. As the observance of the orders of the Sultanate rests, in the first place, on great commanders, and in the second on the inferior servants, they were excluded from the bliss of doing homage and were reproved. Wheu they showed signs of penitence (lit when the characters of repentance were clear in the lines of their foreheads to correct readers of such marks), and had made confession of their shortcomings, they were permitted to present themselves.

One of the occurrences was that while the sublime cortege was passing through Udaipur, reports came from Gujarat to the effect that a set of ignorant persons had vexed the pilgrims by frightening them about the officers of the Feringhi ports. Though their pure highnesses were addressing them with words of wisdom, and the imperial officers were encouraging them, the generality refused to be comforted. In his great kindness H.M.[33] could not allow this company of voluntary exiles to be left in distress. Accordingly he summoned Qulij Khan, who held severa of the parts of Gujarat, to come to him by relays of horses from the campat Idar and then he

[33] Possibly the meaning is that the ladies could not leave the other pilgrims behind.

sent him off to Gujarat in order that he might go as far as the seashore and soothe and assist the pilgrims.

[The Iqbalnama seems to clear up the difficulty about the ladies having started long before the caravan, for it says expressly that Qulij K. arranged for the departure in the ship Selimi of "the chaste ladies of the harem who had started before" (the caravan).]

By the might of the good fortune of the Shahinshah he in a short space of time performed that excellent service. The secluded ladies of the court of chastity sailed in the ship Selimi, and Sultan Khwaja and the other officers made the voyage in the ship Ilihi. The Christian rulers and the chiefs of every country regarded the advent (of the pilgrims) as an honour and gathered the materials of eternal bliss.

One of the occurrences was that while the splendor of the august standards was casting glorious rays on the territory of Banswara, Raul Pertap the head of that district – who was always stubborn – and Bill Askaran ruler of Dungarpur and other turbulent spirits of that country came and paid the prostration of repentance. Inansmuch as H.M.'s nature is to accept excuses, and to cherish the humble, he accepted the shame of their having rendered little service, at the rate of good service, and took the life, the honour and the country of this faction under the protection of his justice and kindness. They were exalted by special favours.

One of the occurrences was that the Mirzada 'Ali Khan came and did homage. He brought 65 elephants out of the spoils of the eastern provinces, and gave wonderful accounts of those regions and of the good services of the

devotees of their lives. There was cause for thanksgiving to the unequalled Creator.

One of the occurrences was that troops were appointed to Goganda. At this time it came to the august hearing that the Bind engaged in evil thoughts. On the day of Dibmihr 15 Dai, Divine month, Rajah Bhagwant Das, Kuar Man Singh, M. Khan the son of Bairam K., Qasim K. Mirbahar, and a number of experienced men went off to that country. By the great attention of the Shahinghsh that country was cleared from the thorn-brake of rebellion, and adorned by just subjects.

One of the occurrences was that Rajah Todar Mal and 'Itmad K. Khwajasara arrived in Banswara from Bengal and did homage. They presented glorious spoils of that county – among them were 804 noted elephants – and praised the wondrous and daily increasing fortune as shown in the success of the imperial servants, the failure of foes, the cleansing of the country from ingrates, and the repose of the inhabitants.

One of the occurrences was that in Dipalpur, Rahman Quli K. Qushbegi (falconer) arrived from the Hijaz and did homage. He produced before H.M. the petitions of the Sharifs and other officers of that country. H.M. stayed some days in that neighbourhood for disposing of various matters of administration.

One of the occurrences was the mission of Rajah Birbar and Bai Lankaran to Dungarpur. The brief account of this is that the Rajah of that place had from his good fortune petitioned through some intimates of the court that his daughter – who was one of the distinguished of the age for chastity and wisdom – might be included among the palatial servants (i.e.,

might be married to Akbar). In this way a rare jewel would find its proper place, and also a great help would be given to his (the Rajah's) relations. H.M. had regard to his loyalty and granted his request. Those two confidential servants were given leave in order that they might convey in a choice manner the secluded one to the harem of fortune.

One of the occurrences was that on the day of Farwardin 19 Isfandarmaz, Divine month, came from Bai Rai Singh, announcing the conquest of Sirohi and the taking of Abogarh. The brief account of this is that the Rai of Sirohi Sultan Deorali from his ill-fate, and native savagery, came to his own country with an evil intention. At a signal from H.M., Rai Rai Singh, Saiyid Hashim and other servants went to conquer that country, and to punish that evil-disposed person. They began by entering the country and by besieging him. As the fort was strong, and he was without calculating reason, he thought that the lofty hills would protect him, and his arrogance increased. The warriors took up their abode there and proceeded to act leisurely instead of rapidly. Rai Rai Singh sent for his family from his home. He whose fortune was slumberous (the Rai of Sirohi) attacked the caravan on the road with a number of determined men. Many Rajputs who were with the convoy and under the leadership of Raimal fought bravely and there was a great fight. Many fell on both sides, but by the blessing of daily-increasing fortune that audacious high-lander was defeated and became a vagabond in the desert of failure. He abandoned Sirohi and went off to Abugarh. That country (Sirohi), by the excellent conduct of the servants, to be included in the imperial dominions, and they hastened towards Abugarh.[34] The real name of this place is Arbuda Acal (here A.F. spells the words), and it had

[34] It is Mount Abu.

been converted by men's tongues and by time into Abugarh. They say that Arbuda is the name of a spirit who comes in a female form to guide those who have gone astray in the desert of search. Acal means a hill, and the idea is that pure form is specially associated with the place. Abugarh is near Sirohi, and on the borders of Ajmere towards Gujarat. Its extent is about seven kos. On the top of the hill the Hind built in former times a sky-high fortress. The road to it is very difficult. There are springs of good water, and sweet-water wells, and there is sufficient cultivation to support the garrison. There are various flowers and odoriferous plants and the air is very pleasant. Wealthy people have for the sake of spiritual welfare erected temples and shrines there. The victorious bands came to the fort by the aid of daily-increasing fortune, and so strong a fortress, such as great princes would have found it difficult to conquer, came into the hands of this party of loyalists with little effort. S. Deorah was bewildered by the majesty of the Sultanate of the Shahinshah and fell to supplications. He took refuge with the auspicious servants, and made the key of the fort the means of opening the knot of his fortune, by delivering it to them. Rai Rai Singh left the fort in charge of able men, and proceeded to court along with the Rai of Sirohi.

One of the occurrences was the sending the army of fortune to Khandesh. Rajesh 'Ali Khan, the ruler of that country, being backed up by the other rulers of the Deccan, was remiss in his obedience and service. The world's lord, in his abundant graciousness which shows itself to high and low, appointed on the dayof Bahram 20 Isfandarmaz, Divine month, a suitable army under the charge of Shihabu-d-din Khan, Shujaat, Baqi K., Naurang K., M. Nijat K., 'Ali Dost K. and many others were appointed to this service. The order given was that they were in the first instance to

address awakening words to the slumberous in the desert of folly and to bring them to the city of truth, and make them flower gatherers in the garden of good service. If from an evil star they remained in slumber, the troops were to exert themselves to clear off the rust from those darkened ones by the flashings of Indian swords. They were to make over the country to just and disinterested men, and to protect the subjects generally, who are a trust from God.

One of the occurrences was that Rajah Todar Mal was dispatched to the province of Gujarat. When it came to the august hearing that territory was in a disturbed state owing to the care lessness of Wazir K., he bade skilful and trusty men to go there quickly and endeavour to put it into order with the aid of the officers of the country. He hastened there and showed the jewel of his abilities to mankind. The inhabitants and the visitors to the province enjoyed prosperity.

One of the occurrences was that Shahbuz K. came to Dipalpur from the eastern provinces with the success due to his good services, and did homage. When the capture of Rohtas, his victory over Gajpati and his other good services became known to H.M., an order was issued that he should make over Rohtas to Muhibb 'Ali K., and come to court. On the day of Ashtad 26 Isfandarmaz, Divine month he rubbed the forehead of devotion on the threahold of fortune, and was exlted and encompassed by royal favours. As H.M. was desirous that the world-conquering armies should proceed with all expedition to the Deccan, and make that land a station of peace and a centre of justice, he signified to him that he should see to the equipment of the army and put it on a proper footing. He performed this service in

accordance with the order and made the kornish when H.M. was at the capital.

One of the occurrences was the conquest of Idar. It has already been mentioned that when the star of the Rai of that country sank into the horizon of ruin., H.M., by constraint of the principle that just princes are the physicians of the world, and the hakims of horizons, sent thither an army of strenuous men. If conciliatory language had no effect they were to erase the picture of his existence from the page of creation. The ignorant man in his business and wickedness made the admonitions a cause of obstinacy. When Qulij Khan was called away to the ports of Gujarat, he (the Rai of Idar) indulged in worse thoughts, and by his own efforts became stained with the dust of dishonour. The brief account of this heavenly aid is as follows. The Rai made those two things (the admonitions and departure of Qulij K.) a cause of increased presumption, and let a veil fall over his vision. In a short time his senselessness became intoxication, and from his not seeing the wondrous and daily-increasing fortune (of Akbar), Asa Rawal collected some daring men, and came out of the defiles to deliver battle. The imperial servants went to meet him. On the night of Gosh 14 Isfandarmaz, Divine month, they left Sher K. with a body of troops to guard the camp and proceeded to the field of battle. Khwaja Ghiasu-d-din 'Ali Asaf K. commanded in the centre. Timur Badakhshi commanded the right wing, and Mir Abu-l-lais the left wing. M. Muqim Naqshbandi, Nur Qulij, Dhira Parman, Mir Ghiasu-d-din and others were in the van. Shimal K., Gada Ali and others formed an ambush (Kamin-gah). The enemy formed two bands and came on quickly. M. Muqim and some of the azis of the van displayed activity, and Mozaffar advanced from the centre. The brave men of the

victorious army loosed their rein and rushed to do battle. The daring Rajputs made ready their spears and eucountered them. There were wondrous hand-to-hand combats. The jewel of courage was brought to the test and acquired fresh brilliancy.

Verse.

Drums thundered, the battle began,

Swords were drawn, heroes strove,

Blood flowed like wine, their cries were the orchestra,

Daggerhilts were the cups, arrows the dessert (naql).

In spite of being wounded in the arm Nur Qulij did not restrain his hand fom battle. Mozaffar fell to the ground from the onset of the Rajputs, but was rehorsed by brave men. Dhira Parman behaved courageously. During this contest the van was put ino disorder, but the abovenamed preserved their honour and stood, sacrificing their lives. M. Muqim drank the wholesome sherbet of death, and Qutb K. one of his companions also played away the coin of his life. at the time when the van was discomfited the victorious troops pressed forward. The foe did what they could, but had to fly. The imperial servants, by the blessing of daily-increasing aids, became successful in the midday of despair and exulted joyfully. When the news of victory reached the august ear he returned thanks to God. The courageous servants were distinguished by royal favors."

2. DISPLAY OF THE LIGHTS OF JUSTICE IS THE SHAHINSHAH'S INDIGNATION AT THE CONDUCT OF KHWAJAH M'UAZZAM. [35]

"It is a requisite of the high office of sovereignty that justice be administered to the oppressed without distinguishing between friend and foe, relative and stranger, and that it place retribution for tyranny in the collar of the tyrant, so that those connected with the sovereign, and those attached to the court may not make their relationship a means of oppression, and that if, which God forbid, any such event should occur out of infatuation, right-acting men may be under no apprehension in reporting the oppression, but may boldly bring it forward. God be praised that this lofty characteristic is marked in the disposition of the Shahinshah that the human intellect is at a loss how to describe 1 and 1 This world-ministering quali' is so unaffectedly existent in the sacred nature of H.M., that all classes rely upon it and pass their days in peace and tranquility.

In the beginning of this Divise year and middle of 971, - which was the preamble of the distribution of justice – Khwajah M'uazzani, who was the half-brother of the noble lady H.M. Miriam-Makani; as he had no flavor of real relationship so did he make his outward relation an intoxicating durg and show himself on various occasions as an example of immoderation. In the suspicious time of H.M. Jahanbani Jinnat Ashiyani, as it was a season for gentleness, H.M. had consideration for the noble lady and used to pass by his offences. For instance, in the year of the expedition to Badakhshan, he attacked H.M.'s divan Khwaja Rashidi and with the sword of immoderation

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[35] Fazl,Abul,Akbarnama,Translated from the Persian by H.Beveridge,two Vols in one,vol.1 -11,Low price publications,Delhi,2007,pp,334-340.

shed the blood of that worthy man. He absconded after committing this horrid crime and came to Kabul. Thereafter he was allowed again, by the intercession of hear intimates of H.M., to come to Court, and renewed his mishehaviour. At last H.M. expelled him, and he went off to the Hijaz. He committed wickedness upon wickedness and came back to India. There he displayed the old bad qualities One day, when the ministers and officers were assembled in the Shahinshah's palace; he made an unprovoked attack on Mirza 'Abdullah Moghal who was ranked among the great Amirs. On account of some story he ran at him and kicked him and struck him with his fiats. On another occasion he behaved rudely to Bairam Khan and put his hand to his dagger. He was again expelled. He now went to Gujrat and there spent his days in doing harm to him-self and to others. On account of his bad conduct and bad circumstances he could not remain there. He turned his face towards the world protecting court. When Agra became the seat of the Caliphate he was exalted by the bliss of service and was diatinguished every where by kindnesses and consideration. But inasmuch as his nature was compact, of immoderation he revealed his character by hundreds of presumptuous acts and by his disregard of his past. Bairam Khan was arranging to make him over to Wali Beg in order that he might be conveyed by way of Bakar to Gujrat, when Bairam himself became excluded, and the Khwaja, on account of his connexion with the holy family, was treated with high favours. But he was caught by the hand of his own wickedness and continued to commit hundreds of unruly actions. At lass Bihm Fatima, who had been H.M. Jahanbani Jinnat Ashiyani's Urdu-begi, and now held a high position in H.M. the Shahinshah's harem, and whose daughter Zahra Agha was in the Khwaja's household, and was, owing to his barbarity and wickedness continually in grief and in the prison of affliction, game one day

with a thousand agitations and implored help as the Khwaja was about to go to his pargana and was going to take her daughter with him. On account of his wickedness and of the evil imagination which were part of his nature he mediated the death of this chaste and innocent lady. She said over and over again that from apprehensions of the Shahinshah's justice he could not affect his purpose in the capital. Now that he was taking her to his jagir, what would happen? H.M. had compassion on the distress of this old servant and soothed her troubled mind. He was going a hunting, he said, and for her sake he would cross[36] (the river) by the Khwaja's house. When the Khwaja came out to pay his respects he would give him good advice sad forbid him to take her daughter with him. Shortly afterwards H.M. left the citadel and crossed the river by boat. He then went off to the Khwaja's house with a few special attendants not more than twently. Among tham were Dastam Khan, Tahir Muhammad Khan Mir Faraghat, Qatlsq Khan, Maqbii Khan, Shimal Khan, Peshru Khan, and Hakim-nl-mulk. As the unaccommodating temper of the Khwaja of the Khwaja was known, the Mir Faraghat and Peshru Khan were sent ahead in order that they might apprise him of the sublime advent and bring him to the highway of rectitude. And Dastam Khan and Maqbil Khan were sent after these two in order that if the Khwaja should, according to his usual, custom, behave in an insane manner, they might assist Tahir Muhammad Khan. When the ungovernable madman heard from Tahir

[36] In Akbar's time the Jamna flowed, as it were, through the middle of Agra, many of the nobles and others hazing their houses on the east bank. This was evidently the case of Khwaja M'uazzam. There was a bridge of boats across the Jamna, and probably Akbar usually went by it. This time he went by boat in order to land near the Khwajah's residence. It says that when the Khwaja stabbed his wife, Akbkar was near enough to hear her screams. It also says that Akbar afterwards told his mother what he had done and that she expressed her approval.

Muhammad Khan and Peshru Khan that H.M. had crossed the river at this place and had sent them, he became violent and said, "I shall not come into H.M's presence." Then he went, full of wrath, to the female apartments, and drawing his dagger killed Zahra Agha who had just come from the bath and was robbing herself in the dressing-room. In this way he provided for himself a supply of eternal destruction. Then he put his head out of the window and flung the blood-stained dagger to where Dastam Khan was standing and cried out with a loud voice, "I have shed her blood, go and tell." Dastam Khan took up the bloody dagger and brought it to H.M. When H.M. the Shahinshah heard of this outrage he boiled over with indignation and entered the house of the villain. The madman buckled on his sword and came into the presence with his hand on the hilt. H.M. angrily asked him. "What kind of conduct is this? Your hand is on your sword; attempt to draw it and I shall strike such a blow on your head that your soul wills dipart." When the madman beheld the majesty of the Shahinsha, his hands and feet gave way and he sank down. These present arrested him. One of the Gujratis was standing behind the Khwajah with a sword and was meditating treason. H.M. perceived his intention and bade Qatlaq Qadam Khan strike him. That ready-witted one understood at once and struck him such a blow that his head rolled off and lay beside his feet. For a moment the trunk remained standing and the black blood spouted from the arteries of the neck. H.M. then asked the Khwajah for what fault had he shed the unfortunate woman's blood. The monster opered his mouth and uttered delirious ravings till at length they silenced him by blows and kicks. Dragging him by the hair and kicking him they brought him to the river. The tide of wrath foamed up in the ocean of justice, and in accordance with orders, the servants, who were always the boon-companions (hamkasa) of his violence and frenzy, were

bound neck and hand and immersed in the whirlpool of retribution. Though they dipped the wicked wretch in the river he showed tenacity of life and did not cause his ravings. He knew that to blaspheme saints was painful to the king, and so he indulged in this. Though everyone was convinced that in this whirlpool of wrath he would be killed by the buffeting of the waves, yet from tenacity of life and hardness of heart he remained alive. He was made over to Maqbil Khan who sent him to Gwaliar where he was imprisoned. Melancholia took possession of him there, and he died of a disordered brain. There is a ridge in the precincts of the fort, and there he was buried; but afterwards his body was brought to Delhi. God be praised! Hail to the Fortune which consumes sedition and the justice which wipes out violence. As H.M.'s solo object is to show forth the lights of justice and so erase the traces of oppression, his dominion increases daily, and also his prosperity.

One of the dominion increasing occurrences of this auspicious year was the victory of 'All Quli Khan Zaman over Fath Khan of Patna. The account or this is as follows. Fatah Khan, Hasan Khan his brother, Mallu Khan and a large number descended from fort Rohtas and took possession of Bihar and various estates belonging to the Khan Zaman. They chose the son of Salim Khan, who had the name of Awaz Khan, for the throne, and uplifted the head of sedition. The Khan Zaman and other officers of that country, such as Bahadur Khan, Majnun Khan, and Ibrahim Khan proceeded to oxtiuguish these flames of disaffection. As the Afghans were in full force, the Khan Zaman did not think a battle advisable and made himself secure in a fort on the bank of the son (called) Andhiari-bari[37] (?). At this time Maulana 'Alau-d-din Lari, Mulla 'Abdullah Sultanpuri, Shihabu-d-din Khan

[37] Perhaps Andaribari is the proper reading.

and Wazir Khan came from the court. This was because H.M. the Shahinashah had resolved that the Khan Zaman should be established in the path of fidelity by good counsels, and by royal favours. Ample favour, too, was shown to Sulaiman Karacani, the governor (Hakim) of Bengal, who had made himself one of the court officers and associated himself with the Khan Zawan, and who recited the Khutba in the Shahinshah's name. If it seemed advisable and opportune, he (Sulaiman) was to be brought to kiss the threshold – the elixir of spiritual and temporal excellence. Those envoys came inside the fort and gave the Khan Zaman the good news of the royal favour. They strengthened him physically and morally, and at such a time of discomposure conjoined him with victory. One day they were seated in front or the Khan Zaman when the black-hearted Afghans came towards the fort with an equipped army and a number of war-elephants. The Khan Zaman was collecting his forces when they came, and as soon as they arrived they repulsed his men and threw them into confusion. His whole army fled, and the Afghans set themselves to plunder their quarters. Just when those presumptuous ones (the Afghans) had made things difficult, the daily-increasing fortune of the Shahinshah looked to the outward connection of the Khan Zaman with the sublime palace and viauifested itself in a wondrous way.

The brief account of this astonishing affair is that the Khan Zaman assisted by a few men was waiting inside the fort-walls for an opportunity of fighting or of retreating. Hasan Patni was mounted on an elephant named Bakht-buland and advanced with a body of troops. The men fled, and Khan Zamin and the few who remained resolved to die. He went to one of the

bastions and having fired[38] (?), a mortar which was planted there, discharged it in the face of the presumptuous army which was advancing like a most elephant. The discharge and the striking of the elephants head were simultaneous. The elephant was overthrown and killed, and the army was dispersed. A divine help which occurred at this time close upon the above providential boon, was that there was an elephant called Kohpira which Bairam Khan had given to Bahadur Khan when the latter was deputed to Malwa. It had become completely mast and was kept chained up, and was still quarrelsome. When the Khan Zaman's troops were driven off, the Afghan elephant-drivers loosed it and mounted it. While they were riding it, it became violent and overthrew and killed an Afghan elephant that was close by. A great uproar arose, and the Afghans mistook this for the noise of the victorious army and fled. The Afghans also who were engaged in plundering all at once lost their heads and dispersed. When the fugitives (of Khan Zaman's troops) heard of this Divine help they turned back and pursued the black-fated Afghans. Much booty and many noted elephants were captured. It was solely by the fortune of the Shahinshah that such a great victory showed her. After it the Khan-Zaman returned and went towards Jaunpur, and sent the envoys to court with all honour from Zamaniya.

One of the occurrences was the arrival of Amir Murtiad. As the world-protecting gateway of the Shahinshah is the rendezvous of the elite of the earth, for Almighty God hath made the king's holy personality desirous of collecting all perfections, and a collection of liberal sciences, and a

[38] Ceg-harda. No dictionary seems to explain this phrase, only guessed that it means to explode the mortar. Perhaps it is the Turki cash and means "to elevate".

gatherer of all kinds of beneficial things, so do the solitary ones of the seven climes leave their native lands and turn their faces towards this holy gateway and there attain felicity. One of the wonderful things is that when the master of any science or craft, who is the unique of the age in his department – from theology to carpentery – comes into the society of the Shahinshah, he hears from his such acute remarks about his science or art as he has never heard from his teachers, an becomes convinced that H.M. has devoted his whole time to the study thereof. In short H.M. by h is wide capacity, and great-mindedness, which are exercised without effort, and with adaptation to his listener – from the highest to the lowest grade – makes the latter successful, spiritually and physically. Among those was the glorious Saiyid Amir Murtaza, who belonged to the very learned Jurjan family, and who was eminent in the national and traditional sciences. He had circumsmbulsted the holy places of pilgrimage, and now took up his abode at the sublime threshold which is the K'aaba for the pilgrims of blessedness and the altar for the caravans of suspiciousness. He according to proper regulations became acquainted with the majestic assemblies, and gained auspiciousness. The Khedive of the Age, who is a connoisseur in human jewels, recognized the advent of the Mir as an honour, and distinguished him by graciousness and by copious gifts.

H.M. the Shahinshah left off the pleasure of hunting, and having located the camp in that pleasant spot and placed some officers in charge, he went o ff on horseback towards Mandu, which was the residence of the rebel. On the way he sent Ashraf Khan and I'timad Khan in advance in order that they might convey to 'Abdullah Khan, who was apprehensive on account of his improper actions, the news of the royal favour, and bring him

to do homage, and might not permit him to be a vagabond in the fields of disloyalty. With the wings of swiftness he went from Khirar to Sarangpur[39] which is the first city in Malwa and is at a distance of 25 Malwa kos, which are equal to more than 40 De m kos, and he performed this journey in such a time of mud and waer in one stage. At the confines of Sarangpur, Mun'immad Qasim. Khan of Nishapur, to whom the government of that place was entrusted, had the felicity of going out to meet him. He begged H.M. to alight at his house, and offered as a present on the part of himself and his followers nearly 700 horses and mules. These were distributed to the officers and servants. At dawn he proceeded towards Ujjain, which in former times was the capital of the kings of Malwa. When the climate of Dhar[40] had become delightful (lit. ottoscattering) by the arrival of the encampment, Ashraf Khan and Itimad Khan came from 'Abdullah Khan and reported the state of his case. It appeared that though these loyal servants had done their office zealously, yet no impression was made on his hypocritical heart. He would not accept any consolation. He sent his family out of the fort, and then waited till evening and followed his men. He made some idol requests and sent them away. For instance he asked that he should receive no detriment in person or purse, and that the province of Mandu should be left to him as before, and that Tingri Bardi, Khan Quli, and Insan Bakhshi should be allowed to accompany him. Mun'im Khan Khan-Khanan relying upon H.M's clemency and mildness, begged the pardon of his offences. H.M. the Shahinshah, out of his abundant graciousness, drew the line of

[39] It is stated in the Akhbac-ai-Whyar that Shrangpar derives its name from one Nhaikh Sarang, who was originally an offirev of Sultan Firoz Shah.

[40] It was Rajah Bhoja's capital.

forgiveness over his offences and accepted his petition. He issued an order in accordance with their and again dispatched 'Itimad Khan and Darbar Khan to him.

3. 'IBADAT KHANA' A DISCUSSION PLACE OF VARIOUS THINGS INCLUDING JUSTICE.[41]

Although God-given wisdom and the science of Divine knowledge (theology) adorn his holy personality and illumine his actions, yet, owing to the utter marvelous ness of his nature, he every now and then draws a special well over his countenance, and exercises world-sway and speaks and acts in accordance with the requirements of the time. At the present day, when the morning-breeze of fortune is blowing, and the star of success is continually acquiring fresh radiance, he, by his practical knowledge and farsightedness, makes external ability the veil of spirituality and appraises the value of the mortifiers of the passions, and the caliber of scientists. It has been mentioned[42] that he, in his ample search after truth, had laid the foundation of a noble seat for intellectual meetings. His sole and sublime idea was that, as in the external administration of the dominion, which is conjoined with eternity, the merits of the knower's of the things of this world had by profundity of vision, and observance of justice, been made conspicuous, and there had ceased to be a brisk market for pretence and favoritism, so might the masters of science and ethics, and the devotees of piety and contemplation, be tested, the principles of faiths and creeds be examined, religions be investigated, the proofs and evidences for each be considered, and the pure gold and the alloy be separated from evil commixture. In a short space of time a beautiful, detached building was erected, and the fraudulent vendors of impostures put to sleep in the privy chamber of contempt. A noble palace was provided for the spiritual world, and the pillars of Divine knowledge rose high.

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[41] Fazl,Abul,Akbarnama,Translated from the Persian by H.Beveridge,two Vols in one,vol.1 -11,Low price publications,Delhi,2007,pp,364-384.

[42] 'Ibadat Khana' a discusson place of intellectual meetings.

At this time, when the centre of the Caliphate (Fathpur Sikri) was glorified by H.M.'s advent, the former institutions were renewed, and the temple of Divine knowledge was on Thursday nights illuminated by the light[43] of the holy mind. On 20 Mihr,[44] Divine month, 3 October 1578, and in that house of worship, the lamp of the privy chamber of detachment was kindled in the banqueting-hall of social life. The coin of the hivers of wisdom in colleges and cells was brought to the test. The clear wine was separated from the less, and good coin from the adulterated. The wide capacity and the toleration of the Shadow of God were unveiled. Sufi, philosopher, orator, jurist, Sunni, Shia, Brahman, Jati,[45] Siura[46] Carbak,[47] Nazarene, Jew, Sabi (Sabian[48]), Zoroastrian, and others enjoyed exquisite pleasure by beholding the calmness of the assembly, the sitting of the world-lord in the lofty pulpit (mimbar), and the adornment of the pleasant abode of impartiality. The treasures of secrets were opened out without fear of hostile seekers after battle. The just and truth-perceiving ones of each sect emerged from haughtiness and conceit, and began their search anew. They displayed profundity and meditation, and gathered eternal bliss on the divan of greatness. The conceited and quarrelsome from evilness of disposition and shortness of thought descended into the mire of presumption and sought their profit in loss. Being guided by ignorant companions, and from the predominance of a somnolent fortune, they went into disgrace. The conferences were excellently arranged by the acuteness and keen quest of truth f the world's Khedive. Every time, eye and heart gained fresh luster, and the lamp of vigils acquired new glory. The candle of investigation was lighted for those who loved darkness and sequacity. The families of the colleges and monasteries were tested. The handle of wealth and the

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[43] The meaning is that Akbar was present at the discussions.

[44] End of September 1578. Add. 27, 247 has day of Bahram 20 Mihr = Friday 1 Shaban (3 October 1578).

[45] For Yati, the clergy or ascetics among the Jains.

[46] Siura. A general name for the Jains.

[47] For Charvaka. They are the Nastiks or infidels of Hindu philosophy. A. F. is severe upon this sect in the Ain. J. III, 21. There is an account of them in the Dabistan.

[48] Sabian. Also called the Christians of St. John.

material of sufficiency came into the grasp of the needy occupants of the summit of expectation. The fame of this faith-adorning method of world bestowing made home bitter to inquirers and caused them to love exile. The Shahinshah's court became the home of the inquirers of the seven climes, and the assemblage of the wise of every religion and sect. The veneer and the counter fitness of all those who by feline tricks and stratagems had come forth in the garb of wisdom were revealed. A few irreverent and crafty spirits continued their old tactics after the appearance of Truth and its concomitant convictions, and indulged in brawling. Their idea was that as in the great assemblies of former rulers the purpose of science and the designs of wisdom had been but little explored owing to the crowd of men, the inattention of the governor of the feast, the briskness of the market of praters, etc., so perhaps in this august assemblage they might succeed by the length of their tongues, and a veil might be hung over the occiput (fararu) of truth. The Khedive of wisdom by the glory of his mind carried out the work to a conclusion deliberately and impartially, and in this praiseworthy fashion, which is seldom found in the saints of asceticism, - how then is it to be found in world-rulers? – tested the various coins of mortals. Many men became stained with shame and chose loss of fame, shile some acquired wisdom and emerged from the hollow of obscurity to eminence. Reason was exalted, and the star of fortune shone for the acquirers of knowledge. The bigoted 'Ulama and the routine-lawyers, who reckoned themselves among the chiefs of philosophies and leaders of enlightenement, found their position difficult. The veil was removed from the face of many of them. The house of the evil-thinking coiners became the abode of a thousand suspicions and slanders. Though the wicked and crooked-minded and disaffected were always speaking foolishly about the pious Khedive, yet at this time they had a new foundation for their calumnies, and descended into the pt of eternal ruin. Inasmuch as the warmth of the Shahinshah's graciousness increases daily and he was aware of the ignorance of those turbulent ones, he did not proceed against them with physical and spiritual vigour and with external and internal majesty. Rather, he restrained his heart and tongue from uttering his disgust, and did not allow the dust of chagrin to settle on the skirt of his soul. In a short space of time many of these fortunately fell into fatal evils and suffered losses and died, while some who were of a good sort became ashamed, and took up the work (of study) anew. From a long time it was the custom that

the dull and superficial regarded the heartfelt words of holy soul as foolishness. They recognized wisdom nowhere but in the schools, and did not know that acquired knowledge is for the most part stained with doubts and suspicions. Insight is that which without schooling illuminates the pure temple of the heart. The inner soul receives rays from holy heaven. From eternity, the ocean of Divine bounties has been in motion, and the cup of those who are worthy of the world of creation is filled to the brim there from Always have the magnates of Use and Wont in spite of their great knowledge sought the explanation of wisdom and ethics ('ilm u 'amal) from this company of the pure in heart, and have waited in the antechamber of the simple and beautiful of soul, and have gathered bliss there from. Accordingly histories tell of this, and it transpires in biographies (?).[49] God be praised for that at this day the Lord of Lords of inspired (ladum) wisdom is represented by the Holy Personality of the Shahinshah. The difficulties of sect upon sect of mankind are made easy by the flashings of his sacred soul. The attainment of enlightenment is not the first[50] robe of honour which the eternal needle sews. He, who knows the secrets of the past, and the reader of ancient stories, is well aware of this. Still more is it known to the awakened, the truth-choosing and the acute! May the Almighty God ever keeps verdant and watered this tree which is rich in spiritual and material fruit!

Verse.

Lord, so long as the world hath glory and colour,

Heavens, motion, the earth, stability;

Make the world the possession of this lord of conjunctions,

Make the spheres friendly to this world-conqueror.

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[49] Ba siyar. But text is basiyar, many, and perhaps the meaning is only that there is much evidence of this in histories.

[50] Apparently the meaning is that possessors of enlightenment came late, and perhaps also that awakened souls came late, and acute truth choosers still later.

One night, the assembly in the 'Ibadatkhana was increasing the light of truth. Padre Radif, one of the Nazarene sages, who was singular for his understanding and ability, was making points in that feast of intelligence. Some of the untruthful bigots came forward in a blundering way to answer him. Owing to the calmness of the august assembly, and the increasing light of justice, it became clear that each of these was weaving a circle of a acquisitions, and was not following the highway of proof, and that the explanation of the riddle of truth was not present to their thoughts. The veil was nearly being stripped, once for all, from their procedure. They were ashamed, and abandoned such discourse, and applied themselves to perverting the words of the Gospels. But they could not silence their antagonist by such arguments. The Padre quietly and with an air of conviction said, "Alas, that such things should be thought to be true In fact, if this faction have such an opinion of our Book, and regard the Furqan (the Qoran) as the pure word of God, it is proper that a heaped fire be lighted. We shall take the Gospels in our hands, and the Ulama of that faith shall take their book, and then let us enter that testing-place of truth. The escape of any one will be a sign of his truthfulness." The liverless and black-hearted fellows wavered, and in reply to the challenge had recourse to bigotry and wrangling. This cowardice and effrontery displeased his (Akbar's) equitable soul, and the banquet of enlightenment was made resplendent by acute observations. Continually, in those day-like nights, glorious subtleties and profound words dropped from his pearl-filled mouth. Among them was this: "Most persons, from intimacy with those who adorn their outside, but are inwardly bad, think that outward semblance, and the letter of Muhammadanism, profit without internal conviction. Hence we by fear and force compelled many believers in the Brahman (i.e. Hindu) religion to adopt the faith of our ancestors. Now that the light of truth has taken possession of our soul, it has become clear that in this distressful place of contrarieties (the world); where darkness of comprehension and conceit are heaped up, fold upon fold, a single step cannot be taken without the torch of proof, and that creed is profitable which is adopted with the approval of wisdom. To repeat the creed, to remove a piece of skin (i.e. to become circumcised) and to place the end of one's bones on the ground (i.e. the head in adoration) from dread of the Sultan, is not seeking after God."

Verse.

Obedience is not the placing of your forehead in the dust.

Produce[51] truth, for sincerity is not situated in the forehead.

The first step in this perilous desert is with a high courage, and an exalted determination to rise up and do battle with the protean and presumptuous carnal soul, and by rigorous self examination to make Anger and Lust the subjects of Sultan Reason, and to erase from the heart the marks of censurable sentiments. Mayhap the Sun of Proof will emerge from behind the veil of Error and make one a truth worshipper, and afterward he may by secret attraction draw to himself one of the inquirers after the Path. Such loadstones are produced from the mine of asceticism (riyazat). Or it may be that by virtue of talisman and the might of fascination he may bring him into his circle. Should the latter go astray and fall into the pit of not doing God's will, yet shall he not be stained with the dust of blame. He also said, "We blame ourselves for what we did in accordance with old rules and before the truth about faith had shed its rays on our heart."

The fortunate and auspicious, on hearing these enlightening words, hastened to the abode of the light of search and set themselves to amend their ways, while the somnolent and perverse were full of disturbance. Inasmuch as the fierce winds of indiscrimination had laid hold of the four corners of the world, he mentioned the rules of various religions, and described their various Excellencies. The acute sovereign gave no weight to common talk, and praised whatever was good in any religion. He often adorned the tablet of his tongue by saying "He is a man who makes Justice the guide of the path of inquiry, and takes from every sect what is consonant to reason. Perhaps in this way the lock, whose key has been lost, may be opened." In this connexion, he praised the truth-seeking of the natives of India, and eloquently described the companionship of the men of that country in the day of disaster, and how they played away for the sake of Fidelity (lit. in the shadow of), Property, Life, Reputation, and Religion, which are reckoned as comprising the four goods of the world's[52] market. He also dwelt upon the wonderful

[51] There is a play on the words pesh ar 'produce' and peshani 'forehead.'

[52] It is daniya, "the world," dini, "belonging to faith."

way in which the women of that country become ashes whenever the day of calamity arrives.

This bliss-collecting class has several divisions. Some protagonists of the path of righteousness yield up their lives merely on hearing of the inevitable lot of their husbands. Many sensualists[53] of old times were, from ignorance and irreflection, unable to read such exquisite creatures by the lines of the forehead, or the record of their behaviour, and entered with loss the ravine of experiment, and cast away recklessly the priceless jewe! Some deliberately and with open brow enter the flames along with their husband's corpse, or with some token of him who hath gone to the land of annihilation.

Being saturated with love, they burn together,

Like two wicks caught by one flame.

Some whom sacrifice of life and fellowship do not make happy, yet, from fear of men's reproach, observe the letter of love, and descend into the mouth of the fire.

He said to the learned Christians, "Since you reckon the reverencing of women as part of your religion, and allow not more than one wife to a man, it would not be wonderful if such fidelity and life-sacrifice were found among your women. The extraordinary thing is that it occurs among those of the Brahman (i.e. the Hindu) religion. There are numerous concubines, and many of them are neglected and unappreciated and spend their days unfructuously in the privy chamber of chastity, yet in spite of such bitterness of life they are flaming torches of love and fellowship." On hearing such noble recitals those present remained silent in the hall of reply, and their tongues reddened with surprise. The Divine message filled with joy all the seekers after wisdom in the august assemblage.

One of the occurrences was the division of his time. Though H.M. watches over his being and cherishes his time, nor spends any portion of it idly or uselessly, yet at this

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[53] The meaning is that some husbands were so gross-minded as not to believe in their wives' virtue, and so tried them by causing them to receive false reports of their death, thereby losing the priceless jewel of a virtuous wife.

auspicious period he discussed the subject for the guidance of the fortunate, and by apportioning day and night gave a lesson to mankind. Though in every act of movement or repose he is cognizant of the Almighty, and assiduous in doing His will, as befits obedience to Sultan Wisdom, yet when he arises from sleep he withdraws his attention from everything else, and makes his outward accord with his inward conditions and practices devotions, and makes his heart a memorial of the Creator. He returns thanks for his existence and commences his good works. In this holy employment he spends not less than five gharis, i.e. two astronomical hours, and he regards it as the key of the gate of successes (muqasid) Insamuch as God has made us complex, it is fitting that some attention should be paid to the body. He therefore pays some regard to the clothing thereof and to his toilet. Not more than three gharis are spent on this occupation. After that he opens the gates of justice and holds open Court. In the investigation into the cases of the oppressed, he places no reliance on testimony or on oaths, which are the resource of the crafty, but draws his conclusion from the contradictions in the narratives, the physiognomy, and from sublime researches, and noble conjectures. Truth takes her place in this centre. In this work he spends not less than 1.5 pahars. As it is the social state, it is indispensable that he devote some time to food, and to offices of decency. He does no spend more than two gharis in these things. As rulers are bound to make lofty the hall of justice, and to seek enlightenment from the tongue of the dumb and helpless, they must necessarily spend some time with elephants, horses, camels and mules and the like. So her takes note of their food and forage, and pays attention to the grooming of this homely crowd. He sets four gharis apart for this work. He also spends two pahars in the female apartments in the affairs of his secluded wives, and of the other chaste ladies who make petitions to him. It is necessary that he give his mind to these matters that there may be equality in his treatment of them (the women), and that equity be preserved. As the foundation of the house of bones rests upon sleep he from motives of health, which is bound up with thanksgiving, spends 2.5 pahars in sweet slumbers. From this account those who have the honour of attending the court will reap bliss, and receive into their hands the laws of good fortune.

One of the occurrences was the sending of truth-speaking, acute persons to examine the treasuries. Some interested, evil-minded persons represented to H.M. that the

treasurers of the capital had become dishonest and had opened the hand of frand. Inasmuch as the management of the minutiae of administration, what need then to speak of the generalities, rests on the genius of just rulers, H.M. nominated Mozaffar K., Khwaja Shah Mansur, Qasim K., and some other experienced and intelligent persons to examine into the matter. They in a short space of time inspected the money in the treasury and tested its amount and quality. The mischievous storytellers met with their deserts.

One of the occurrences was the commencement of the opening of the treasury of the Anuptalao. Already an order had been given for filling it with various kinds of coin. When by the labours of energetic and honest workers it had been filled to brim, the bounteous sovereign on 23 Mihr, Divine month (beginning of October 1578), established his divan on the bank and began his gifts. He commenced by supplications to the gracious and incomparable Deity. After that he lifted out one by one a mohar, a rupee, and a dam. A similar amount was given to several of those who were admitted to the presence. The writer or this noble volume also participated in this favour. After that, crowds of men received gifts, handful by handful, and skirt by skirt. He addressed the first set and said with a mystery revealing tongue that each one should out of loyalty regard the royal gift as an amulet of Reason's arm, and should for the sake of the stability of the dominion (Akbar's), and the attainment of desires, make a vow to the effect that he would bestow a specific portion of whatever of the world's goods he amassed on the poor and needy, so that he might in a short time attain eternal joy. The fortunate and auspicious regarded this speech as a Divine message and succeeded in opening the knot of their desires. The evil and black hearted regarded it as fiction and broke (i.e. bent or left it in) the thorn of failure in the foot of fortune. The inquiring heart brought a close scrutiny to bear on men's careers and continued searching for a sign of the wonders of miraculous[54] aid. In a short space of time those who hearkened to the Divine message reached the lofty position of Amirs, and those who from somnolent fortune did not regard it did not attain such a position. What do I say! They then lost the position they had, and were spiritually and materially ruined. The exposition of this wonderful circumstance is a long story. Whom

[54] Damgira. This word is not explained in the dictionaries, but means help, especially of a miraculous kind.

shall I eulogize, and from whom shall J strip the veil? I shall write a brief account of what happened to myself, and this will help to make the matter comprehensible. I set myself out of loyalty to preserve the gift, and by the blessing there of I became a flower-gatherer in fortune's garden. Inasmuch as good fortunes repose in time's ambushes and seek for assistance, and as the wonder-workers of destiny conduct the new travelers in the land of assiduity and application into narrow defiles in the beginning of their career, so was I at the first stage of the long road of social life brought into a bitter country. By dint of a right intention and the strength of an awkened fortune, I went on with an open brow and a determined step. By the guidance of celestial aids I closed the tongue of desire, and confiding my ear to the pleasant abode of content I made the threshold of the world's lord my resting-place, and gathered bliss. The vicissitudes of Time cast no dust of instability into that pure temple, and the narrow path of guidance became a wide plain of joy. My fellow-travellers dispersed on account of the darkness of fortune's face and the difficulties of maintenance, but some of them from fidelity and nobleness bravely footed the path along with me. They got expansion by my expansion. One day they were empty-handed and in difficulty, and endeavoured to spend that capital of fortune (the Anuptalao gift). The reply from my nature's antechamber was, "It will not be sufficient for two days, practice now whatever remedy you would employ (after the two days), and be patient. If this (the gift) be a surety for eternal life, refrain from folly and let not go the skirt of the vow." As fate was propitious, they accepted the celestial counsel, and there was no stirring of the dust of distress. In a similar manner from the ascent and descent of the spheres the multiform, presumptuous spirit rose up several times to contend and was defeated. In a short space of time, by the blessing of the holy spirit (Akbar's), Fortune's door opened, and without the labour of search or the recommendation of man, the Shahinshah's favour raised this obscure sitter in the dust to celestial dignity, Silver or gold had no weight or value in thought's balance. Many great men of the age fell into the thorn-brake of envy. I hope that by gaining the spiritual kingdom my countenance may be made joyful, and that the little of the impulses or deaires which remain may disappear. Do you suppose I am writing a panegyric? I am only recording in a thanksgiving manner something about favours that have been received. The glorious qualities of God's chosen One are more than the capacity of the vulgar of the age can comprehend. The abundant

kindnesses which I have enjoyed prompts me to impress on the hearts of the exoteric something of my own adventures. May it be eyes to the blind, and a collyrium to the seeing, and may they continually garner bliss in the palace of Truth!

Among the occurrences was the arrival of a report from Khan Jahan. When by the glory of activity and skill the delightful country of Bengal had been cleared of the weeds and rubbish of the ingrates, Ibrahim Naral and Karimdad Musazai waited for an opportunity of making a disturbance in the country of Bhati. 'Isa the zamindar of that country spent his time in dissimulateion. Shah Bardi also, the admiral (mir nauara), raised the head of presumption. The able servant (Khan Jahan) led an army thither. In the neighbourhood of the town (qasba) of Gwas[55] Naulaka[56] the mother of Daud, and her dependants, and also Mahmud K. Khaskhail, commonly known as Mati, and many disaffected Afghans presented themselves with offers of submission. Much property was obtained and choice collections were made. A dispute arose between Naulaka and Mati. Khan Jahan who wanted to send him to annihilation, put him to death, ostensibly in order that he might be punished for the charge of fraud which was brought against him, but also that the properties seized might remain concealed. Shah Bardi, who was a vagabond[57] in the desert of insubordination, accepted good counsels and became loyal. When the town of Bhawal[58] became the station of the army, Ibrahim Naral, Karimdad and other Afghans of that country brought forward propositions of obedience and used the language of harmony. 'Isa however state in the ravine of disobedience, and was presumptuons. A large force was sent against him under Shah Bardi and Muhammad Quli. It proceeded by

[55] It is properly Gawas, or Gwas as in A.N. It is in Murshidabad district, and is a very large and well-known pargana.

[56] Meaning apparently "Nine lecs."

[57] awara. A. F. apparently uses this word because it jingles wit Shah Bardis title of Mir Nawara.

[58] This is Bhawal or Ran Bhawal in the Dacca district. It was in Sarkar Bazuha.

the river Kiyara[59] Sundar, and a hot engagement took place on the borders of Kastal? 'Isa was defeated and fled, and much valuable booty fell into the hands of the warriors for dominion. Inasmuch as pride increases the blindness of the heart and eyes, Majlis Dilawar and Majlis Pratap,who were landholders in that part of the country, suddenly brought out a crowd of boats from the rivers and channels and kindled the flames of contention. The warriors of the victorious army lost courage and turned to flee, and in that encounter some of the voyagers left their boats and fled. Muhamad Quli in his activity and courage threw himself upon the enemy's boats and carried on the fight. He contended as much as he could and then was made prisoner. One of the wonderful results of daily-increasing fortune was that when the army was retreating, Tila Ghazi, a land-holder, came and opened the hand of courage so that in despair's midday the lights of victory revealed themselves to the imperial servants. Together with abundant booty they gained their object. The black-hearted foe fell into the billows of despair. Just then Ibrahim Naral sent his son with choice products of the country and asked for protection. The general (Khan Jahan) accepted his excuses and returned. He proceeded to Sihhatpur which he had founded in the neighbourhood of Tanda, and then reported the celestial aids to the august court.

At this time of joy a musician named Gadai was brought before H.M., and it appeared that he had twenty-five children from one wife. Apropos of this H.M. said, "A Biluci had twenty children from one wife and he came to the court and petitioned saying, and people say this chaste matron has become forbidden to me (haram) on account of the numerous births. 'What remedy have I, and what cure is there for my wretchedness?' We bade him be comforted and observed that such a saying had not the appearance of truth. Wicked story-tellers must have invented it. If any matrimony (kesh) produced such a good result (as so large a progeny) it was an honour to the parties, and not a case for abstention (hurmat). Let him then go on to display his own virility, and the fertility of his

[59] Kinara in text, but both the I.O. MSS. have Kiyara, or Giyara. In the Ain, Kiyara Sundar is mentioned as a large reservoir in Sonargaon. Possibly the river meant is one near Egara Sunda or thana Nikli in the Maimansingh district.

spouse." H.M. told this lively story, and the hearts of the auditors had a fresh entertainment.

One of the occurrences was the flashing of the light of truth from his sacred soul. Though H.M. from his wide capacity and splendid genius knows that multiplicity is the veil of unity, and keeps such ward and watch that every one of the enlightened men of the world and (also) of the swift-goers of the spiritual court regards that royal cavalier of insight as his own leader, yet as the thoughts of solitude have been kneaded into his constitution, the threads of the exquisite veil become occasionally broken. Accordingly, at this time, Bakhshu Qawwal[60] recited before him two heart-ravishing stanzas in a pleasing manner. That Syllabus of the roll of recognition (of God) displayed a countenance flashing with Divine lights. Those whose vision did not extend beyond the plain outward appearance received spiritual delight (from the singing). Much more then was the state of the internally farsighted! When H.M. returned from that wonderful condition, he gave thanksgivings to God, and filled the hope-skirt of the songster with rich coin.

One of the occurrences was the emerging of M. Aziz Kokaltash from the narrows of exclusion. From association with ignorant flatterers, and the tumultuousness of youth, he had fallen into the thornbrake of evil desires. The justice-loving sovereign had from his abundant kindness and wisdom excluded him from the bliss of doing homage, and sent him to school for increase in sense. When there appeared signs of repentance on his forehead, and the light of service revealed itself, H.M. brought him on 12 Aban, Divine month, out of the gloomy abode of melancholy, and bestowed various favours on him, and he proceeded to redeem past times by the performance of service.

One of the occurrences was the coming of Rajah Madhukar to court. It has already been mentioned that he had stirred up the dust of battle and been stained by defeat. After that he had felt ashamed, and was spending his days in distressed

[60] Qawwal means a story-teller, a singer, or improvisatore. The name is apparently Banjui There is the variant Bachui. Perhaps he is the famous minstrel of Bahadur Shah of Gujarat, whose singing had such a wonderful effect on Humayun. Bayley's Gujarat

circumstances. Sadiq K. wisely took up his quarters in the country. When the Rajah fell into difficulties on account of the pressure of the gallant troops he was compelled to have recourse to humility, and made his former good services his testimonials. He came forward with a thousand fawnings and excuses. The officers answered that if preparations for war had not been made his supplications might have been listened to. The matter would now be referred to H.M. He also should send an able man and impress his wretchedness on the minds of the courtiers. Perhaps the billows of kindness might seize him and cast him from the whirlpool of despair upon the shore of attainment of desire. Accordingly he sent his brother's son Som Cand with presents to court. The envoys were received at Bhera, and as H.M. is merciful he had pity upon him and showed him kindness. When the news of the forgiveness of his offence arrived, he proceeded to court along with the officers. On 21 Aban, Divine month, Sadiq K. and the other officers came and did homage, and the presumptuous one (the Rajah) gathered bliss by prostrating himself. The world's lord kept his promise and exalted him by various favours.

One of the occurrences was the arrival of Mozaffar Hussain M. at Court in chains. It has been mentioned that at the instigation of evil-disposed persons he had, in Gujarat, turned away from the court of fortune and been rebellious, and now he had become a vagabond and gone to Khandesh. Out of kindness and sympathy Maqsud Damba was sent to bring him to court, along with the presents. The ruler of the country made delays in surrendering him, and proposed extravagant conditions. Apparently he had fallen into improper thoughts on account of the royal standards having proceeded towards the Panjab. Qutbu-d-din K. sent Khwajagi FAth Ullah nd communicated counsels (to the ruler). The report of the return of H.M. towards the capital illuminated the world. Of necessity he abandoned his undecoming thoughts and sent him off along with the servants of the Court. Muttalib K. and some soldiers from Malwa were dispatched to accompany him. On 27 Azar, Divine month, that wanderer in the wilderness of unsuccess was brought to court. H.M. from kindness and circumspection made him over to a keeper so that he might learn wisdom. In a short space of time there appeared signs of auspiciousness in his behaviour, the pen of forgiveness was drawn over his offences, and

he was distinguished[61] by the favour of the Shadow of God. Next day, Qutbu-d-din K. came from Gujarat and did homage, and was exalted by various favours from the Shahinshah. Also about this time Rajah Bhagwant Das, Jagannath, Rajah Gopal, Jagmal Panwar and some other strenuous ones were sent off to the Panjab. Each of these received weighty advices, a noble steed, and a robe of honour. An order was issued that they should exert themselves in service, and not depart from the counsels of S'aid K., and should not slumber in administering the province and in maintaining their own preparedness.

One of the occurrences was the sending of Shahbaz K. to Ajmere. When it became known that the Rana had raised the head of turbulence there, Ghazi K. Muhammad Husain, S. Taimur Badakhshi, Mirzada 'Ali K. and many others were sent off on 4 Dai under his command in order that the Rana and others might be guided to good service. Otherwise they were to be destroyed by the flaming sword. Much treasure was sent along with them. In a short space of time that blackthoughted one was disgraced and the general public enjoyed repose, and returned thanks.

One of the occurrences was the laying the foundation of poor-houses. From abundant graciousness and kindness an order was given to the workmen that they should erect sarais in the various quarters of the capital, and make them over to benevolent and generous persons so that the poor and needy of the world might have a home without having to look for it, or to endure the pain of waiting. In a short space of time the orders were admirably carried out, and those without resources enjoyed the comforts of a home in a foreign land.

One of the occurrences was the death of Khan Jahan. When he returned successful from Bhati he took up his abode at Sihhatpur. The sincerity of his soul had become somewhat clouded by the sense-robbing wine of self-love. Fortunately, the veil of honour was not rent. In a short space of time he fell upon the bed of pain. The heat of fever ended

[61] Akbr married him to his eldest daughter Sultan Khanim.

in constipation (?).[62] The Indian physicians did not understand the case and gave him heating medicines, and the thread of his life was snapped. He suffered pains in his belly for 1.5 months, and died on the night of Dibadin 8 Dai, December 1578. H.M. was much grieved and prayed for the forgiveness of his soul, but in accordance with the rule of the spiritual kingdom he submitted to destiny and was patient.

One of the occurrences was the arrival at court of Sultan Khwaja. When he was appointed to the office of the command of the Haj he went off there, taking with him large presents from the Shahinshah for high and low, and made the natives and the strangers of that country attainers of their desires. He transacted the important business he had there and then returned with a large caravan. On the 11th (Dai) H.M. went off to enjoy the pleasure of hunting, and Sultan Khwajah presented himself there. He produced Arab horses and other rarities, and each of his companions enjoyed the bounty of the Shahinshah according to his degree. The Khwaja related many instances of the propitious assistances given by M., and so delighted the hearts and ears of men.

Among them was this, that during the voyage a youth fell one night from the ship's deck into deep water. The faster the ship moved on, the nearer sounded his cries, and they reached the ears of those on board. The Khwaja made a vow to the world's lord and sent off a boat (sumbuk) with sailors in it and waited in expectation of the Divine power. The crew thought this out-of-place searching to be absurd, and a long time elapsed. The tongues of the fault-finders grew long, and the good man was sunk in sorrow. In the midnight of despair those who had been sent brought safely him who had fallen into the water. The ring of devotedness was fastened in the spiritual ear of the general public. In a short time the good services of the Khwaja bestowed a new luster on him. He was made a Tarkhan[63] and was appointed to the office of Sadr. At the same time an order was given that Mir Faqiru-d-din of Mashhad, who had the title of Naqib K.,

[62] Shikam-bastagi. Presumably this is the same as shikam giriftagi and means constipation. But perhaps indigestion or dyspepsia is meant.

[63] An old Moghul title conveying certain privileges, and among others that of not being punished till the commission of nine offences.

should proceed from Ujjain to the government of Patan. When he arrived there, Tarsun K., who was governor there, came to court.

One of the occurrences was the sending of a Mir Haj. The sole object of the sovereign is that the empty-handed and deserving poor of every country may obtain their desires. As it was manifest that on hearing the report of the distribution of money, needy persons from Asia Minor and Syria assembled in the Arab peninsula, and as the tale of the delight and the thanksgiving of the natives and foreigners in that country was reported to H.M., the ocean of his benevolence was commoved, and an order was given to the officers of the Caliphate that a generous and active-minded person should be appointed to this office, and that twice as much (money) as was sent formerly should be sent. Khwaja Yahya was represented as worthy of this post, and he was accepted. On 26 Dai he went off with a large caravan, to deliver the great gifts. He was the great grandson of Khwaja Ahrar, and was one remove from Khwaja 'Abdullah, whom the Turanians call Khwajagan Khwaja. Though he had not much trod the arena of contemplation and piety (nair u ta'ulluh), yet he knew something of medicine and had read somewhat about Sufism. He was also one of the first of the age for truth and uprightness. At this time also Qulij K. was sent to Gujarat in order that he might help the officers there in looking after the peasantry and the soldiers, and also that he might look after his own properties. Haji Ibrahim was made Sadr of the province. But he did not understand the nature of this kind of education and showed the baseness of his nature and his folly, and received punishment[64] accordingly, as will be mentioned in its proper place. Also at this time Khwaja Ghiasu-d-din 'Ali Asaf K. was sent to Malwa and Gujarat. Inasmuch as it is indispensable that a ruler should send everywhere able men so that the condition of the army may be known, that skilful and eloquent man was sent off on 20 Bahman to carry out the branding regulation in Malwa, and then to proceed to Gujarat. He was to improve the army in accordance with the advice of Shihab-d-din Ahmad K. and Qulij K.

REGULATIONS FOR ADMISSION TO COURT.

[64] He was imprisoned in Ranthambhor and tried to escape, but therope broke and he was killed. who hints that it was a murder and not a suicide. He died in 994.

Abul Fazal has also given the detail of the Akbar's court where he provided justice to the people.[65]

"Admittance to Court is a distinction conferred on the nation at large; it is a pledge that the three branches of the government are properly looked after, and enables subjects personally to apply for redress of their grievances. Admittance to the ruler of the land is for the success of his government what irrigation is for a flower-bed; it is the field, on which the hopes of the nation ripen into fruit.

"His Majesty generally receives twice in the course of twenty-four hours, when people of all classes can satisfy their eyes and hearts with the light of his countenance. First, after performing his morning devotions, he is visible from outside the awning, to people of all ranks, whether they are given to worldly pursuits, or to a life of solitary contemplation, without any molestation from the mace-bearers. This mode of showing himself is called, in the language of the country, darsan (view); and it frequently happens that business is transacted at this time. The second time of his being visible is in the State Hall, whither he generally goes after the first watch of the day. But this assembly is sometimes announced towards the close of day, or at night. He also frequently appears at a window, which opens into the State Hall, for the transaction of business; or he dispenses there justice calmly and serenely, or examines into the dispensation of justice, or the merit of officers, without being influenced in his judgment by any predilections or anything impure and contrary to the will of God. Every officer of government then presents various reports, or explains his several wants and is instructed by His Majesty how to proceed. From his knowledge of the character of the times, though in opposition to the practice of kings of past ages, His Majesty looks upon the smallest details as mirrors capable of reflecting a comprehensive outline; he does not reject that which- superficial observers call unimportant, and counting the happiness of his subjects as essential to his own, never suffers his equanimity to be disturbed.

[65] The Aln-i-Akbari,vol-1,pp,165-166.

Whenever His Majesty holds court they beat a large drum, the sounds of which are accompanied by Divine praise. In this manner, people of all classes receive notice. His Majesty's sons and grandchildren the grandees of the Court, and all other men who have admittance, attend to make the kornish, and remain standing in their proper places. Learned men of renown and skilful mechanics pay their respects; the Daroghas and Bitikchis (writers) set forth their several wants; and the officers of justice give in their reports. His Majesty, with his usual insight, gives orders, and settles everything in a satisfactory manner. During the whole time, skilful gladiators and wrestlers from all countries hold themselves in readiness, and singers, male and female, are in waiting. Clever jugglers and funny tumblers also are anxious to exhibit their dexterity and agility.

His Majesty, on such occasions, addresses himself to many of those who have been presented, impressing all with the correctness of his intentions, the unbiased ness of his mind, the humility of his disposition the magnanimity of his heart, the excellence of his nature, the cheerfulness of his countenance, and the frankness of his manners; his intelligence pervades the whole assembly, and multifarious matters are easily and satisfactorily settled by his truly divine power.

This vale of sorrows is changed to a place of rest: the army and the nation are content. May the empire flourish and these blessings endure.

REGULATIONS REGARDING THE KORNISH AND THE TASLIM IN THE COURT[66]

"Superficial observers, correctly enough, look upon a king as the origin of the peace and comfort of the subjects. But men of deeper insight are of opinion that even spiritual progress among a people would be impossible ____ emanating from the king,

[66] Ibid,pp,166-168.

in whom the light of God dwells; for the throne, men wipe off the stain of conceit and build up the arch of true humility.[67]

With the view, then, of promoting this true humility, kings in their wisdom have made regulations for the manner in which people are to show their obedience. Some kings have adopted the bending down of the head. His Majesty has commanded the palm of the right hand to be place upon the forehead and the head to be bent downwards. This mode of salutation, in the language of the present age, is called kornish, and signifies that the saluter has placed his head (which is the seat of the senses and the mind) into the hand of humility, giving it to the royal assembly as a present, and has made himself in obedience ready for any service that may be required of him.

The salutation, called taslim, consists in placing the back of the right hand on the ground, and then raising it gently till the person stands erect, when he puts the palm of his hand upon the crown of his head, which pleasing manner of saluting signifies that he is ready to give himself as an offering.

His Majesty relates as follows; "One day my royal father bestowed upon me one of his own caps, which I put on. Because the cap of the king was rather large, I had to hold it with my [right] hand, whilst bending my head downwards, and thus performed the manner of salutation (kornish) above described. The king was pleased with this new method, and from his feeling of propriety ordered this to be the mode of the kornish and taslim.

Upon taking leave, or presentation, or upon receiving a mansab, a jagir, or a dress of honour, or an elephant, or a horse, the rule is to make three taslims; but only one on all other occasions, when salaries are paid, or presents are made.

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[67] Hence the presence of the king promotes humility, which is the foundation of all spiritual life. so especially in the case of Akbar, towards whom, as the head of the New Church, the subjects occupy the position of disciples.

Such a degree of obedience is also shown by servants to their masters and looked upon by them as a source of blessing. Hence for the disciples of His Majesty, it was necessary to add something, viz., prostration[68] (sijda); and they look upon a prostration before His Majesty as a prostration performed before God; for royalty is an emblem of the power of God, and a light-shedding ray from this Sun of the Absolute.

Viewed in this light, the prostration has become acceptable to many, and proved to them a source of blessings upon blessings.

But as some perverse and dark-minded men look upon prostration as blasphemous man-worship, His Majesty from his practical wisdom, has ordered it to be discontinued by the ignorant, and remitted it to all ranks, forbidding even his private attendants from using it in the Darbar-I Sam (general court-days). However, in the private assembly, when any of those are in waiting, upon whom the star of good fortune shines, and they receive the order of seating themselves, they certainly perform the prostration of gratitude by bowing down their foreheads to the earth, and thus participate in the halo of good fortune.

In this manner, by forbidding the people at large to prostrate, but allowing the Elect to do so, His Majesty fulfils the wishes of both, and shows the world a fitting example of practical wisdom."

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[68] The prostration, or sijda, is one of the positions at praver, and is therefore looked upon by all Muhammadans as the exclusive right of God. When Akbar, as the head of his new faith, was treated by his flattering friends, perhaps against his calmer judgment as the representative of God on earth, he had to allow prostration in the assemblies of the Elect. The people at large would never have submitted. The practice evidently pleased the emperor, because he looked with fondness upon every custom of the ancient Persian kings, at whose courts the had been the usual salutation. It was Nivam of Badakhshan who invented the prostration when the emperor was still at Fathpur [before 1580]. The success of the innovation made Mulla Asian of Kabul exelaim. O that I had been the inventor of this little business!"

ON ETIQUETTE IN THE COURT[69]

"Just as spiritual leadership requires a regulated mind, capable of controlling covetousness and wrath, so does political leadership depend on an external order of things, on the regulation of the difference among men in rank, and the power of liberality. If a king possesses a cultivated mind, his position as the spiritual leader of the nation will be in harmony with his temporal office; and the performance of each of his political duties will be equivalent to an adoration of God. Should anyone search for an example, I would point to the practice of His Majesty, which will be found to exhibit that happy harmony of motives, the contemplation of which rewards the searcher with an increase of personal knowledge, and leads him to worship this ideal of a king.[70]

When His Majesty seats himself on the throne, all that are present perform the kornish, and then remain standing at their places, according to their rank, with their arms crossed,[71] partaking, in the light of his imperial countenance, of the elixir of life, and enjoying everlasting happiness in standing ready for any service.

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[69] Ibid,p168-169.

[70] The words of the text are ambiguous. They may also mean, and leads him to praise me as the man who directed him towards this example.

[71] The finger tips of the left hand touch the right elbow, and those of the right hand the left elbow; or, the fingers of each hand rest against the inner upper arm of the opposite side. The lower arms rest on the kamarband. When in this position, a servant is called amada-yi khidmat, or ready for service. Sometimes the right foot also is put over the left, the toes of the former merely touching the ground. The shoes are, of course, left outside at the saff-i-nigal. The emperor sits on the throne with crossed legs, or chahar-zanu, a position of comfort which Orientals allow to persons of rank. This position, however, is called fir Sawni nishast, or Pharaoh's mode of sitting, if assumed by persons of no rank in the presence of strangers. Pharaoh – Orientals mean the Pharaoh of the time of Moses – is proverbial in the East for vainglory. The position suitable for society is the du-inu mode of sitting, i.e., the person first kneels down with his body straight; he then lets the body gently sink till he sits on his heels, the arms being kept extended and the hands resting on the knees.

The eldest prince places himself, when standing, at a distance of one to four yards from the throne, or when sitting, at a distance from two to eight. The second prince stands from one and one-half to six yards from the throne, and in sitting from three to twelve. So also the third; but sometimes he is admitted to a nearer position than the second prince, and at other times both stand together at the same distance. But His Majesty generally places the younger princes affectionately nearer.

Then come the Elect of the highest rank, who are worthy of the spiritual guidance of His Majesty, at a distance of three to fifteen yards, and in sitting from five to twenty. After this follow the senior grandees from three and a half yards, and then the other grandees, from ten or twelve and a half yards from the throne.

All others stand in the Yasal.[72] One or two attendants[73] stand nearer than all."

Al-Badaoni, a great historian of the court of Akbar and generally considered opposite of Abul fazal and Akbar ,he points out about justice of Akbar in following words[74]

" Whereas Hindustan has now become the centre of security and peace – and the land of justice and beneficence, a large number of people, especially learned men and lawyers, have immigrated and chosen this country for their home. Now we, the principal Ulamas, who are not only well versed in the several departments of the law

[72] Yasal signifies the wing of an army, and here, the two wings into which the assembly is divided. The place before the throne remains free. One wing was generally occupied by the grandees of the Court and the chief functionaries; on the other wing stood the Qur the Mullas, and the S Ulma, etc.

[73] The servants who hold the saya-ban.

[74] Abdul-I-Qadir ibn-I-Muluk Shah known as Al-Badaoni,Muntakhabu-T-Tawarikh,translated and edited by from the original Persian sourcesn by W.H.Lowe,revised and enlarged with an account contaning the contemporaries estimate of Akbar by BRAHMADEVA PRASAD AMBASHTHYA,Published by Academica asiatica Patna-6,1973,p,279.

and in the principles of jurisprudence, and well-acquainted with the edicts which rest on reason or testimony, but are also known for our piety and honest intentions, have duly considered the deep meaning, first, of the verse of the Quran (Sur, IV, 62), "Obey God, and obey the prophet, and those who have authority among you," and secondly, of the genuine tradition, "Surely, the man who is dearest to God on the day of judgment, is the Imam-I Adil: whosoever obeys the Amir, obeys Me; and Whosoever rebels against him, rebels against Me," and thirdly, of several other proofs based on reasoning or testimony; and we have agreed that the rank of a Sultan-i Sudil (a just ruler) is higher in the eyes of God than the rank of a Mujthahid. Further we declare that the king of Islam, Amir of the Faithful, shadow of God in the world, Abdu 'l-Fath Jalalu 'd-Din Muhammad Akbar Padishah-i ghazi, whose kingdom God perpetuate, is a most just, a most wise, and a most God fearing king. Should therefore, in future, a religious question come up, regarding which the opinions of the Mujtahids are at variance, and His Majesty, in his penetrating understanding and clear wisdom, be inclined to adopt, for the benefit of the nation and as a political expedient, any of the conflicting opinions which exist on that point, and issue a decree to that effect, we do hereby agree that such a decree shall be binding on us and on the whole nation."

Al-Badaoni has also quoted a verses which has written by Shaikh Faizi [75]which also show of good giver of justice.[76]

"The Lord has given me the empire,

And a wise heart, and a strong arm,

He has guided me in righteousness and justice,

And has removed from my thoughts everything but justice.

His praise surpasses man's understanding,

[75] A court poet of Akbar court.

[76] Ibid,p277.

Great is His power, Allah" Akbar!"

Al-Badaoni has also given very vivid picture of law and order and justice of Akbar which I am quoting from his writing.

"For these discussions, which were held every Thursday[77] night, His Majesty invited the Sayyids, Shaykhs, Ulama, and grandees, by turn. But as the guests generally commenced to guarrel about their places, and the order of precedence, His Majesty ordered that the grandees should sit on the east side; the Sayyids on the west side; the Ulamas to the south; and the Shaykhs to the north. The emperor then used to go from one side to the other and make his inquiries ... when all at once, one night, 'the vein of the neck of the Ulamas of the age swelled up,' and a horrid noise and confusion ensured. His Majesty got very angry at their rude behaviour, and said to me [Badaoni], 'In future report any of the Ulamas that cannot behave and that talks nonsense, and I shall make him leave the hall.' I gently said to Asaf Khan, 'If I were to carry out this order, most of the Ulamas would have to leave,' when His Majesty suddenly asked what I had said. On hearing my answer, he was highly pleased, and mentioned my remark to those sitting near him."

Soon after, another row occurred in the presence of the Emperor"[78]

"Some people mentioned that Haji Ibrahim of Sarhind had given a decree, by which he made it legal to wear red and yellow clothes,[79] quoting at the same time a Tradition as his proof. On hearing this, the Chief Justice, in the meeting hall; called him an accursed wretch, abused him, and lifted up his stick in order to strike him, when the Haji by some subterfuges managed to get rid of him."

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[77] The text has shab-i-Jumsa, the night of Friday; but as Muhammadans commence the day at sunset, it is our Thursday, night.

[78] Ibid,p205.

[79] As women may use.

Akbar was now fairly disgusted with the Ulamas and lawyers; he never pardoned pride and conceit in a man, and of all kinds of conceit, the principal Ulamas; and no sooner had his courtiers discovered this, than they brought all sorts of charges against them." [80]

Liet.-Colonel .D.C. Phillott has edited Ain-Akbari who has quoted Badauni and given vivid picture of akbar order which is follwing;

[Bad. II, p. 203.]

"His Majesty therefore ordered Mawlana Abdu 'llah of sultanpur, who had received the title of Makhdum" 'l-Mulk, to come to a meeting, as he wished to annoy him, and appointed Haji Ibrahim Shaykh Abu 'l-Fazl (who had lately come to court, and is at present the infallible authority in all religious matters, and also for the New Religion of His Majesty, and the guide of men to truth, and their leader in general), and several other newcomers, to oppose him. During the discussion, His Majesty took every occasion to interrupt the Mawlana when he explained anything. When the quibbling and wrangling had reached the highest point, some courtiers, according to an order previously given by His Majesty, commenced to tell rather queer stories of the Mawlana, to whose position one might apply the verse of the Quran (Sur. XVI, 72), 'And some one of you shall have his life prolonged to a miserable age, etc.' Among other stories, Khan Jahan said that he had heard that Makhdum" 'l-Mulk had given a fatwa, he had said, that the two roads to Makhah, through Persia and over Gujrat, were impracticable, because people, in going by land (Persia) had to suffer injuries at the hand of the Qizilbashes (i.e., the Shisah inhabitants of Persia), and in going by sea, they had to put up with indignities from the Portuguese, whose ship-tickets had pictures of Mary and Jesus stamped on them. To make use, therefore, of the latter alternative would mean to countenance idolatry; hence both roads were closed up.

[80] Ibid,p,213.

"Khan Jahan also related that the mawlana had invented a clever trick by which he escaped paying the legal alms upon the wealth which he amassed every year. Towards the end of each year, he used to make over all his stores to his wife, but he took them back before the year had actually run out.[81]

"Other tricks also, in comparison with which the tricks of the children of Moses are nothing, and rumours of his meanness and shabbiness, his open cheating and worldliness, and his cruelties said to have been practiced on the Shaykhs and the poor of the whole country, but especially on the Aimadars and other deserving people of the Panjab – all came up one story after the other. His motives, 'which shall be revealed on the day of resurrection' (Qur. LXXXVI, 9), were disclosed; all sorts of stories, calculated to ruin his character and to vilify him, were got up, till it was resolved to force him to go to Makkah.

"But when people asked him whether pilgrimage was a duty for a man in his circumstances, he said No;[82] for Shaykh Ab" 'n-Nabi had risen to power, whilst the star of the Mawlana was fast sinking."

But a heavier blow was to fall on the Ulamas. [Bad. II, p. 207.]

"At one of the above-mentioned meetings, His Majesty asked how many freeborn women a man was legally allowed to marry (by nikah). The lawyers answered that four was the limit fixed by the prophet. The emperor thereupon remarked that from the time he had come of age, he had not restricted himself to that number, and in justice to his wives, of whom he had a large number, both freeborn and slaves, he now wanted to know what remedy the law provided for his case. Most expressed their opinions, when the emperor remarked that Shaykh Abd" 'n-Nabi had once told him that

[81] Alms are due on every surplus of stock or stores which a Sunni possesses at the end of a year, provided that surplus have been in his possession for a whole year. If the wife, therefore, had the surplus for a part of the year, and the husband took it afterwards back, he escaped the paying of aims.

[82] I.e., he meant to say he was poor, and thus refuted the charges brought against him.

one of the Mujtahids had as many as nine wives. Some of the Ulamas present replied that the Mujtahid alluded to was Ibn Abi Laya; and that some had even allowed eighteen from a too literal translation of the Quran verse (Qur., Sur. IV, 3), 'Marry whatever women ye like, two and two, and three and three, and four and four,' but this was improper. His Majesty then sent a message to Shaykh Abd" 'n-Nabi, who replied that he had merely wished to point out to Akbar that a difference of opinion existed on this point among lawyers, but that he had not given a fatwa in order to legalize irregular marriage proceedings. This annoyed His Majesty very much. 'The Shaykh,' he said, 'told me at that time a very different thing from what he now tells me.' He never forgot this.

"After much discussion on this point the Ulamas, having collected every tradition on the subject, decreed, first, that by mutsah [not by nikah] a man might marry any number of wives he pleased; and, secondly, that mutsah marriages were allowed by Imam Malik. The Shisahs, as was well known, loved children born in mutsah wedlock more than those born by nikah wives, contrary to the Sunnis and the Abl-I Jamasat.

"On the latter point also the discussion got rather lively, and I would refer the reader to my work entitled Najat" 'r-rashid , in which the subject is briefly discussed. But to make things worse, Naqib Khan fetched a copy of the Mwwatta of Imam Malik, and pointed to a Tradition in the book, which the Imam ad cited as a proof against the legality of mutsah marriages.

"Another night, Qazi Ya qub, Shaykh Abu 'l-Fazl, Haji Ibrahim, and a few others were invited to meet His Majesty in the house near the Anuptala,o tank. Shayih Abu 'l-Fazl and been selected as the opponent, and laid before the emperor several traditions regarding mutsah marriages, which his father (Shaykh Mubarak) had collected, and the discussion commenced. His Majesty then asked me, what my opinion was on this subject. I said, 'The conclusion which must be drawn fom so many contradictory tradition s and sectarians customs, is this:- Imam Malik and the Shisahs are unanimous in looking upon mutsah marriages as legal; Imam Shafisi and the Great Imam (Hanifah) look upon mutsah marriages as illegal. But, should at any time a Qazi of the Maliki sect

decide that mutsah is legal, it is legal, according to the common belief, even for Shafisis and Hanafis. Every other opinion on this subject is idle talk.' This pleased His Majesty very much."

The unfortunate Shaykh Ya qub, however, went on talking about the extent of the authority of a Qazi. He tried to shift the ground; but when he saw that he was discomfited, he said, "Very well, I have nothing else to say – just as His Majesty pleae."

"The Emperor then said, 'I herewith appoint the Maliki Qazi Hasan Arab as the Qazi before whom I lay this case concerning my wives, and you, Ya qub, are from today suspended.' This was immediately obeyed, and Qazi Hasan on the spot gave a decree which made mutsah marriages legal.

"The veteran lawyers, as Makhdum" 'l-Mulk, Qazi ya qub, and others, made very long faces at these proceedings.

"This was the commencement of 'their sere and yellow leaf'.

"The result was that, a few days later, Mawlana Jalal" 'd-Din of Multan, a profound and learned man, whose grant had been transferred, was ordered from Agra (to Fathpur Sikri) and appointed Qazi of the realm. Qazi Ya qub was sent to Gaur as District Qazi.

"From this day henceforth, 'the road of opposition and difference in opinion' lay open, and remained so till His Majesty was appointed. Mujtahid of the empire." [Here follows the extract regarding the formula Allah" Akbar, given on.

[Badaoni II, p. 1.]

"During this year [983], there arrived Hakim Abu 'l-Fath, Hakim Humayun (who subsequently changed his name to Humayun Quli, and lastly to Hakim Humam), and Nur" 'd-Din, who as poet is known under the name of Qarari. They were brothers, and came from Gilan, near the Caspian Sea. The eldest brother, whose manners and address were exceedingly winning, obtained in a short time great ascendency over the Emperor;

he flattered him openly, adapted himself to every change in the religious ideas of His Majesty, or even went in advance of them, and thus became in a short time a most intimate friend of Akbar.

"Soon after there came from Persia, Mulla Muhammad of Yazd, who got the nickname of Yazidi, and attaching himself to the emperor, commenced openly to revile the Sahabah (persons who knew Muhammad, except the twelve Imams), told queer stories about them, and tried hard to make the emperor a Shiah. But he was soon left behind by Bir Bar – that bastard! – and by Shaykh Abu 'l-Fazl and Hakim Abu 'l-Fath, who successfully turned the emperor from the Islam, and led him to reject inspiration, prophetship, the miracles of the prophet and of the saints, and even the whole law, so that I could no longer bear their company.

"At the same time, His Majesty ordered Qazi Jalal" 'd-Din and several Ulamas to write a commentary on the Quran ; but this led to great rows among them.

"Deb Chand Raja Manjhola – that fool – once set the whole court in laughter by saying that Allah after all had great respect for cows, else the cow would not have been mentioned in the first chapter (SURAT" 'l-bagarah) of the Quran.

"His Majesty had also the early history of the Islam read out to him, and soon commenced to think less of the Sahabah. Soon after, the observance of the five prayers and the fasts, and the belief in everything connected with the prophet, were put down as ____, or-religious blindness, and man's reason was acknowledged to be the basis of all religion. Portuguese priests also came frequently; and His Majesty inquired into the articles of their belief which are based upon reason."

[Badoni II, p. 245.]

"In the beginning of the next year [984], when His Majesty was at Dipalpur in Malwah, Sharif of Amul arrived. This apostate had run from country to country, like a dog that has burnt its foot, and turning from one sect to the other, he went on wrangling till be became a perfect heretic. For some time he had studied Sufic nonsense

in the school of Mawlana Muhammad Zahid of Balkh, nephew of the great Shaykh Husayn of Khwarazm, and had lived with derwises. But as he had little of a derwish in himself, he talked slander, and was so full of conceit that they hunted him away. The Mawlana also wrote a poem against him, in which the following verse occurs:-

"There was a heretic, Sharif by Lame,

Who talked very big, though of doubtful fame.

"In his wanderings he had come to the Dakhin, where he made himself so notorious, that the king of the Dakhin wanted to kill him. But he was only put on a donkey, and shown about in the city. Industan, however, is a nice large place, where anything is allowed, and no one cares for another, and people go on as they may. He therefore made for Malwah, and settled at a place five kos distant from the Imperial camp. Every frivolous and absurd word he spoke was full of venom, and became the general talk. Many fools, especially Persian heretics (whom the Islam casts out as people cast out hairs which they find in dough – such heretics are called Nuqtawis, and are destined to be the foremost worshippers of Antichrist) gathered round him, and spread, at his order, the rumour that he was the restorer of the Millennium. The sensation was immense. As soon as His Majesty heard of him, he invited him one night to a private audience in a long prayer room, which had been made of cloth, and in which the emperor with his suite used to say the five daily prayers. Ridiculous in his exterior, ugly in shape, with his neck stooping forward, he performed his obeisance, and stood still with his neck stooping forward, he performed his obeisance, and stood still with his arms crossed, and you could scarcely see how his blue eye (which colour is a sign of hostility to our prophet) shed lies, falsehood, and hypocrisy. There he stood for a long time, and when he got the order to sit down, he prostrated himself in worship, and sat down duzanu like an Indian camel. He talked privately to His Majesty; no one dared to draw near them, but I sometimes heard from a distance the word silm (knowledge) because he spoke pretty loud. He called his silly vies 'the truth of truths', or 'the groundwork of things'.

"A fellow ignorant of things external and internal,

From silliness indulging idle talk.

He is immersed in heresies infernal,

And prattles – God forbid! – of truth eternal.

"The whole talk of the man was a mere repetition of the ideas of Mahmud of Basakhwan (a village in Gilan), who lived at the time of Timur. Manmud who had written thirteen treatises of dirty filth, full of such hypocrisy as no religion or sect would suffer, and containing nothing but fital, which name he had given to the 'science of expressed and implied language'. The chief work of this miserable wretch is entitled Bahr o Kuza (the Ocean and the Jug), and contains such loathsome nonsense, that on listening to it one's ear vomits. How the devil would have laughed in his face, if he had heard it, and how he would have jumped for joy! And this Sharif – the dirty thief – had also written a collection of nonsense, which he styled Tarashshuh-i Zuhur, in which he blindly follows Mir Abd" 'l-Awwal. This book is written in loose, deceptive aphorisms, each commencing with the words mifarmudand (the master said), a queer thing to look at, and a mass of ridiculous, silly nonsense. But notwithstanding his ignorance, according to the proverb, 'Worthies will meet,' he has exerted such an influence on the spirit of the age, and on the people, that he is now [in 1004], a commander of One Thousand and His Majesty's apostle for Bengal, possessing the four degrees of faith, and calling, as the Lieutenant of the emperor, the faithful to these degrees."

The discussions on Thursday evenings were continued for the next year. In 986, they became violent, in as far as the elementary principles of the Islam were chosen as subject, whilst formerly the disputations had turned on single points. The Ulamas, even in the presence of the emperor, often lost their temper, and called each other Kafirs, or accursed.

[Bad. II, p. 255.]

"Makhdum also wrote a pamphlet against Shaykh Abd" 'n-Nabi, in which he accused him of the murder of Khizr Khan of Shirwan, who was suspected to have reviled to prophet, and of Mir Habshi, whom he had ordered to be killed for heresy. But he also said in the pamphlet that it was wrong to say prayers with Abd" 'n-Nabi, because he had been undutiful towards his father, and was, besides, afflicted with piles. Upon this, Shaykh Abd" 'n-Nabi called Makhdum a fool, and cursed him. The Ulamas now broke up into two parties, like the Sibtis and Qibtis, gathering either round the Shaykh, or round Makhdum" l-Mulk; and the heretic innovators used this opportunity, to mislead the emperor by their wicked opinions and aspersions, and turned truth into falsehood, and represented lies as truth.

"His Majesty till now [986] had shown every sincerity, and was diligently searching for truth. But his education had been much neglected; and surrounded as he was by men of low and heretic principles; he had been forced to doubt the truth of the Islam. Falling from one perplexity into the other, he lost sight of his real object, the search of truth; and when the strong embankment of our clear law and our excellent faith had once been broken through, His Majesty grew colder and colder, till after the short space of five or six years not a trace of Muhammadan feeling was left in his heart. Matters then became very different."

[Bad. II, p. 239.]

"In 984 the news arrived that Shah Tahmasp of Persia had died, and Shah Ismail II had succeeded him. The Tarikh of his accession is given in the first letters of the three words ____________________________= 984]. Shah Ismail gave the order that anyone who wished to go to Makkah could have his travelling expenses paid from the royal exchequer. Thus thousands of people partook of the spiritual blessing of pilgrimage, whilst here you dare not now [1004] mention that word, and you would expose yourself to capital punishment if you were to ask leave from court for this purpose."

[Bad. II, p. 241.]

"In 985, the news arrived that Shah Ismail, son of Shah Tahmasp had been murdered, with the consent of the grandees, by his sister Pari Jan Khanum. Mir Haydar, the riddle writer, found the Tarikh of death in Shahinshah-i-zer-I zamin [985] 'a king below the face of the earth. At that time also there appeared in Persia the great comet which had been visible in India , and the consternation was awful, especially as at the same time the Turks conquered Tabriz, Shirwan, and Mazandaran. Sultan Muhammad Khudabanda, son of Shah Tahmasp, but by another mother, succeeded; and with him ended the time of reviling and cursing the Sahabah.

"But the heretical ideas had certainly entered Hindustan from Persia."

Conclusion : We can say that administration of justice of Akbar was great.He played very sifnificant role in the justice by displaying carious kind of jesture.It can see through his popular saying,incident of justice and al-badaoni records of various incident of administration of justice. Although many historians say that there was not regular court at that time but during the reign of Akbar court was held regularly as the contemporary writing are concerned. However Akbar displayed great sense of justice.

Chapter-7th

Judiciary system of Jahangir

Jahangir was a great lover of justice and he took a keen interest in its administration. He did not want that any of his courtiers should hinder the oppressed in their approach to him and so installed a golden chain of justice.

Henry Beveridge who edited the The Tuzuk i-Jahangiri or memoirs of Jahangiri ,has given great description of administration of justice.He made a great remark on the Justice system of jahangir .He pointed out that "“It is a remark of Hallam that the best attribute of Mohammadan princes is a rigorous justice in chastising the offences of others. Of this quality Jahangir, in spite of all his weaknesses, had a large share and even to this day, he is spoken of with respect by Mohammadans on account of his love of justice .It is a pathetic circumstance that it was this princely quality which was to some extent the cause of the great affront put upon him by Mahabat khan. Many complainants had been made to Jahangir of the oppressions of Mahabat Khan in Bengal,and crowds of suppliants had come to Jahangir's camp.It was his desire to give them redress and to punish Mahabat Khan for his exactions,together with his physical and mental weakness,which led to his capture on the banks of the Jhilam."[1]

Henry Beveridge who documented three very good verses which shows the idea of justice.

"Thou art the mighty One, O Lord,

Thou art the cherisher of rich and poor;

I'm not a world-conqueror or law-giver,

I'm one of the beggars at this gate.

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[1] The Tuzuk-i-Jahangiri or memoirs of Jahangiri,translated by Alexander Rogers and edited by Henery Beveridge,published by low price publication,bound in 2 vol,first published 1909-1914,reprinted in LPP,1989,1999,2006,p,preface x.

Help me in what is good and right,

Else what good comes from me to any one

I'm a master* to my servants,

To the Lord I'm a loyal servant."[2]

"for the care of the people of God

At night I mafke note mine eyes acquainted with sleep;

For the ease of the bodies of all

I approve of pain for my own body."[3]

"The second lord of conjunction, Shahinshah Jahangir,

With justice and equity sat on the throne of happiness.

Prosperity, Good Fortune, Wealth, Dignity, and Victory,

With loins girt in his service, stood rejoicing before him.

It became the date of the accession when Prosperity

Placed his head at the feet of the Sahib-Qiran-i-sani."[4]

I am also quoting from the Jahangir memoirs which show a great role of Jahnagir in the administration of justice; [5]

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[2] Ibid,p,vol 2,p,32.

[3] Ibid,p,13.

[4] Ibid,p,vil,1,p,12.

"After my accession, the first order that I gave was for the fastening up of the Chain of Justice, so that if those engaged in the administration of justice should delay or practice hypocrisy in the matter of those seeking justice, the oppressed might come to this chain and shake it so that its noise might attract attention. Its fashion was this: I ordered them to make a chain of pure gold7[6],30 gaz in length and containing 60 bells. Its weight was 4 Indian maunds, equal to 42 'Iraqi maunds. One end of it they made fast to the battlements of the Shah Burj of the fort at Agra and the other to a stone post fixed on the bank of the river. I also gave twelve orders to be observed as rules of conduct (dasturu-i-amal) in all my dominions—

1. forbidding the levy of cesses under the names of tamgha and mir bahri (river tolls), and other burdens imposed for their own profit.

2. On roads where thefts and robberies took place, which roads might be at a little distance from habitations, the Jagirdars of the neighbourhood should build sara'is (public rest-houses), mosfques, and dig wells, which might stimulate population, and people might settle down in those sara'is If these should be near a khalisa estate (under direct State management), the administrator (mutasaddi) of that place should execute the work.

(3) The bales of merchants should be opened on the roads without informing them and obtaining their leave.

(4) In my dominions if anyone, whether unbeliever or Musalman, should die, his property and effects should be left for his heirs, and no one should inspect and separate guardians to guard the property, so that its value might be expended in lawful expenditure, such as the building of mosques and sara'is , the repair of broken bridges, and the digging of tanks and wells.

(5) They should not make wine or rice-spirit (darbahra) or any kind of intoxicating drug, or sell them; although I myself drink wine, and from the age of 18 years up till now, when I am

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[5] The Tuzuk-i-Jahangiri or memoirs of Jahangiri,translated by Alexander Rogers and edited by Henery Beveridge,published by low price publication,bound in 2 vol,first published 1909-1914,reprinted in LPP,1989,1999,2006,pp,7-10.

[6] Du Jarric, who got his information from missionary reports, seems to imply that the chain was of silver, and says that Jaqhangir was following the idea of an old Persian King. It is mentioned in the Siyar al-muta'akhkhirin (reprint, I, 230) that Muhammad Shah in 1721 revived this and hung a long chain with a bell attached to it form the octagon tower which looked towards the river.

38, have persisted in it. When I first took a liking to drinking I sometimes took as much as twenty cups of double-distilled spirit; when by degrees it acquired a great influence over me I endeavoured to lessen the quantity, and in the period of seven years I have brought myself from fifteen cups to five or six. My times for drinking were varied ; sometimes when three or four sidereal hours of the day remained I would to drink, and sometimes at night and partly by day. This went on till I was 30 years old. After that I took to drinking always at night. Now I drink only to digest my food.

3(6) They should not take possession of any person's house.

(7) I forbade the cutting off the nose or ears of any person, and I myself made a vow by this punishment.

(8) I gave an order that the officials of the Crown lands and the jagirdars should not forcibly take the ryots' lands and cultivate them on their own account.

(9) A government collector or a jagirdar should not without permission intermarry the people of the pargana in which he might be.

(10) They should found hospitals in the great cities, and appoint physicians for the healing of the sick; whatever the expenditure might be , should be given from the khalisa establishment.

(11) In accordance with the regulations of my revered fagther, I ordered that each year from the 18th 1 of rabi'u-l-awwal, which is my birthday, for a number of days corresponding to the years of my life, they should not slaughter animals (for food). Two days in each week were also forbidden, one of them Thursday, the day of my accession, and the other Sunday, the day of my father's birth. He held this day in great esteem on this account, and because it was dedicated to the Sun, and also because it was the day on which the Creation began. Therefore it was one of the days on which there was no killing in his dominions. 2

(12) I gave a general order that the offices and jagirs of my father's servants should remain as they were. Later, the mansabs (ranks or offices) were increased according to each one's circumstances by not less than 20 per cent to 300or 400 percent. The subsistence money of the ahadis was increased by 50 per cent., and I raised the pay of all domestics by 20 per cent. I increased the allowances of all the veiled ladies of my father's harem from 20 per cent. to 100 per cent., according to their condition and relationship. By one stroke of the pen I confirmed the subsistence lands1 of the holders of aimas (charity lands) within the dominions, who form the army of prayer, according to the deeds in their possession. I gave order to Miran Sadr Jahan, who is one of the genuine sayyids of India, and who for a long time held the high office of sadr (ecclesiastical officer) under my father, that he should every day produce before me deserving people (worthy of charity). 2 I released all criminals who had been confined and imprisoned for a long time in forts and prisons."

Jahngir also say himself that and I am quoting;

"For the sake of administering justice, I sat there for two or three sidereal hours and listened to the cries for redress, and orderd punishments on the oppressor according to their faults and crimes. Even in the time of Weakness I have gone every day to the jharoka, though in great pain and sorrow, according to my fixed custom, and have looked on ease of body as something unlawful----- By the grace of Allha, it has become my habit not to surrender the nycthemeron, for more than tow or three sidereal hours of the coin of Time , to the plundering of sleep. In this there are two advantages—one,the knowledge of the kingdom; the other, wakefulness of heart in calling God mind. God forbid that this life of a few days should pass in carelessness. As a heavy sleep is in front, I must reckon as a gain this time of my wakefulness, which I shall not see again in sleep, and must not be careless of recollecting God for a single wink. "Be wakeful, for a wondrous+ sleep is ahead."[7]

Dispensation of Justice by Jahangir to the Subjects

Jahangir released prisoners which was misunderstood by many historians .However,it shows the administration of justice;

1. "With regard to the regulation about releasing the prisoners, sir Henry Elliot is somewhat unjust to Jahangir in his commentary at p. 515. It was only those who had been long imprisoned whom Jahagir released, and his proceedings at Ranthambhor in the 13th year (Tuzuk,p. 256) show that he exercised discrimination in releasing prisoners. The account in Price, p. 10, may also be consulted. There Jahangir says he released 7,000 men form Gwalior alone. It may be remembered that most of thesewere political offenders. Private criminals were for the most part put to death, or mutilated, or fined. There were no regular jails."[8]

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[7] Ibid,p,vol,2,p,13.

[8] Ibid,p,10n.

Justice given to the Amiru-l-umara.The following lines tell the incidents;

2. "One day the Amiru-l-umara (Sharif Khan) greatly pleased me by an incidental remark. It was this: "Honesty and dishonesty are not confined to matters of cash and goods; to represent qualities as existing in acquaintances which do not exist, and to conceal the meritorious qualities of strangers, is dishonesty. In truth, honesty of speech consists in making no distinction between intimates and strangers and in describing each man as he really is."

When I sent off Parwiz I had said to him, "If the Rana himself, and his eldest son who is called Karn, should come to wait upon you and service and obedience, you should not do any injury to his territory." My intention in this offer recommendation was of two kinds; one , that inasmuch as the conquest of Transoxiana was always in the pure mind of my revered father, though every time he determined on it things occurred to prevent it, if this business could be settled, and this danger dismissed from my mind, I would leave Parwiz in Hindustan, and in reliance on Allah, myself start for my hereditary territories, especially as at this tiem there was no permanent ruler in that region. Baqi Khan, who, after 'Adbu-llah Khan and 'Abdu-l-Mu'min Khan, his son, had acquired complete independence, had died, and the affairs of Wali Muhammad Khan, his borther, who is now the ruler of that region, had not as yet been brought into proper order. Secondly, to bring about the termination of the war in the Deccan, of which a part in the time fo my reveredfather had been acquired, so that it might come into possession, and be incorporated with the Imperial dominions. My hope is that through the favour of Allah both these undertakings will accomplished.

"Though a king should seize the seven climes,

He still would labour to take other."[9]

[9] Ibid,pp,25-26.

3 "On Sha'ban 27th (28th Decembar, 1605) a strange thing was done by the sons of Akhayraj, so of Bhagwan Das, the paternal uncle[10] of Raja Man Singh. These unlucky ones, who bore the names of Abhay Ram, Bijay Ram, and Shyam Ram, were exceedingly immoderate. Notwithstanding that the aforesaid Abhay Ram had done improper (disproportioned) acts, I had winked at his faults. When at this date it was represented to me that wretch was desirous of dispatching his wives and children without leave to his own country and afterwards of himself running away to the Rana, who is not loyal to this family, I referred to Ram Das and ojtehr Rajput nobles, and said to them that if any one of them woulod become security for them, I would confirm the rank and jagir of those wretches, and passing over their offences would forgive them. In consequence of their excessive turbulence and disposition no one would be bound for them, they must be handed over to the charge of one of the servants of the Court until security was forthcoming. The Amiru-i-umara gave them over to Ibrahim Khan Kakar, who was afterwards dignified with the title of Dilawar Khan, and hatim,2 second son of Mangli, who held the title of Shahnawaz Khan.3 When they wished to disarm these foolish people , they refused, and , not observing the dues of good manners, began, together with their servants, to quarrel and fight . The Amiru-l-umara reported the circumstance to me, and I ordered them to be Punished according to their deeds. He betook himself to driving them off, and I sent Sheikh Farid also after him. One Rajput armed with a sword, and another with a dagger stood up to the Amiru-l-umara. One of his attendants named Qutb engaged the man with the dagger and was killed. The Rajput also was cut to pieces. One of the Afghan attendants of the Amiru-l-umara attacked the one who had the sword and killed him. Dilawar Khan drew his dagger and turned towards Abhay Ram, who with two others was holding his ground, and after wounding one of these fell down after receiving wounds from the three. Some of the ahadis and the men of the Amiru-l-umara opposed and slew these doomed men. A Rajput drew his sowrd and turned to Shaikh Farid; he was met by a Habshi slave, who brought him down. This disturbance took place in the courtyard of the public palace. That punishement served as a warning to many who had not looked to consequences. Abu-n-nabi 1 represented that if such a deed had been done in the Uzbeg country the whole family and connections of that band of men would have been destroyed. I replied that as these people had been treated kindly and educated by my revered father I carried on the same benevolence to them, and justice demands that many shall not be chastised for the fault of one.

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[10] Man Singh was the adopted son of Bhagwan Das, and it would appear from this passage that he was his nephew also.

Shaikh Husain Jami, who now sits on the cushion of darwish and is one of the disciples of the dervish of Shiraz,2 had written to me form Lahore Six months before my accession that he had seen in a dream that saints and pious men ahd delivered over the affairs of the kingdom to that Chosen one of the Court of Allah (Jahangir), and that, rejoiceing in thisgood news, he should await the event, and that he hoped that when it had occurred, the faults of Khwaja Zakariyya, who was one of the Ahrariyaa, 1 would be paradoned." [11]

Jahngir gave justice to Hindus also.Historians always framed them as curel towards Hihdus which is not true regarding Mughal Emperor.The below example shows this;

4"One day I observed to the Pandits, that is , the wise men of the Hindus, "If the doctrines of your religion are based on the incarnation of the Holy Person of God Almighty in ten different forms by the process of metepsychosis, they are virtually rejected by the intelligent. This pernicious idea requires that the Sublime causes, who is void of all limitations, should be possessed of length, breadth, and thickness. If the purpose is the manifestation of the Light of God in these bodies, that of itself is existent equally in All created things, and is not peculiar to these ten form. If the idea is to establish some one of God's attributes, even then there is no right notion, for in every faith and code there are masters of wonders and miracle distinguished beyond the other men of their age for wisdom and eloquence."1 After much argument and endless controversy, they acknowledged a God of Gods, devoid of a body or accidents,2 and said, "As our imagination fails to conceive a formless personality (zat-i-mujarrad), we do not find any way to know Him without the aid of a form. We have therefore made these ten forms the means of conceiving and knowing Him" Then said I, "How can these forms be a means of your approaching the Deity?" [12]

Jahangir has great respect for justice.He went against his son by saying that Kingship regards niether son nor son in law.No one was a relation to a king.The following lines display a great example of this;

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[11] Ibid,pp,29-31.

[12] Ibid,vol,1,p,32-33.

5 "Futile ideas had entered the mind of Khusrau in consequence of his youth and the pride Youths have lack of experience , lack of foresight,lack of worth and lack of companions, especially at the time of my revered father's illness. Some of these short-sighted ones, through the multitude of their crimes and offences, had come hopeless of pardon and indulgence, and imagined that by making Khusrau a tool they might conduct the affairs of State through him. They overlooked the truth that acts of sovereignty and world rule are not things to be arranged by the worthless endeavors of defective intellects. The just Creator bestows these on him whom he considers fit for this glorious and exalted duty and on such a person doth He fit the robe of honour.

"He who is seized of fortune cannot be deprived of it;

Throne and diadem are not things of purchase;

It is not right to wrest crown and dominion

From the head which God, the Crown cherisher, has indicated."

As the futile imaginations of the seditious and short-sighted had no result but disgrace and regret, the affairs of the kingdom were confirmed in the hands of this suppliant At the throne of Allah. I invariably found Khusrau preoccupied and distracted. However much, in favour and affection for him, I wished to drive from his mind some of his fears and alarms, nothing was gained until, at last, by the advice of those whose fortune was reversed, on the night of Sunday, Zi-l-hijja 8th , of the year mentioned (April 6th, 1605), when two gharis had passed, he made a pretence1 of going to visit the tomb of His Majesty (Akbar), and went off with 350 horsemen, who were his adherents, from within the fort of Agra. Shortly after, one of the lamp attendants who was acquainted with the Waziry-i-mulk gave him the news of Khuisrau's flight. The Vizier took him to the Amiru-l-umara, who, as the news seemed true, came in a distracted state of mind to the door of the private apartments and said to one of the eunuchs, "Take in my request and say that I have a necessary representation to make, and let the king honour me by coming out." As such an affair had not entered my thoughts I supposed that news had come from the Deccan or Gujarat. When I came out and heard what the news was. I asked, "what must be done? Shall I mount myself, or shall I send Khurram?" The Amiru-l-umara submitted that he would go if I ordered it. "Let it be so," I said. Afterswards he said, "If he will not turn back on my advice, and takes up arms, what must be done?" Then I said, "If he will go in no way on the right

road, do not consider a crime anything that results form your action. Kingship regards neither son nor son-in-law. No one is a relation to a king."[13]

Justice towards Handicapped .Jahangir was kind enough towards handicapped.The following example shows this;

6"On the same day Kalyan, son of Raja Bikramajit, came form Gujarat. Certain extraordinary proceedings on the part of this rebellious rascal had been reported to me. Amongst these was this. He had kept a Musulman luli woman in his house, and for the fear that this affair should become known had killed her father and mother and buried them in his house. I ordered that he should be imprisoned until I could enquire into his proceedings, and after ascertaining the truth I ordered first that they should cut out his tongue and place him in perpetual confinement, and that he should eat his foot with dot-keepers and outcasts."[14]

Respect for animals and Jahangir gave justice to the animals by punishing the animals killer.The following lines will show the dispesation of justice of jahangir;

"On the 22nd, when I had got within shot of a nilgaw, suddenly a groom (jilaudar) and two kahar (bearers) appeared, and the nilgaw escaped. In a great rage I ordered them to kill the groom on the spot and to hamstring1 the kahars and mount them on acces and parade them through the camp, so that no one should again have the boldness to do such a thing."[15]

Jahangir gave justice to a Hindu widow by punishing a Muslim man which shows ,he did not discriminate between Hindu and Muslim and gender.

"A widow woman complained that Muqarrab Khan had taken her daughter by force in the port of Cambay, and after some while, during which he had kept her in his own house, when she

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[13] Ibid,vol,1,p,51-52.

[14] Ibid,vol,1,p,104.

[15] Ibid,vol,1,p,164.

enquired about the girl he said that she had died by an unavoidable death. I ordered an enquiry to be made into the affair. After much search I discovered that one of his attendants had been guilty of this outrage, and had put her to death, and reduced Muqarrab Khan's mansab by one half, and made an allowance to the woman who had been thus injured."[16]

Justice provided by Jahangir to common masses and old servants. The following lines tell about the justice of the great emperor;

"On the 6th a letter came from 'Abid Khan, bakhshi and news-writer of Ahmadabad, to the purpost that 'Abdu-llah Khan Bahadur Firuz-jang had quarreled with him because he had recorded among (current) events certain affairs that had been unpleasing to him, and had sent a body of men against him, and had insulted him by carrying him away to his house, and had done this and that to him. This matter appeared serious to me, and I was desirous at once to cast him out of favour and ruin him. At last it occurred to me to send Dayanat Khan to Ahmadabad to enquire into this matter on the spot form disinterested people to see it had actually occurred and if so, to bring 'Abdu-llah Khan with him to the Court, leaving the charge and administration ofAhmadabad to sardar Khan, his brother. Befor`e Dayanat Khanstarted, the news reached Firuz-jang, and he in a state of great perturbation confessed himself an offender and started for the Court on foot. Dayanat Khan met him on the road, and seeing him in a strange condition, as he had wounded his feet with walking, he put him on horseback, and taking him with him came to wait for me. Muqarrab Khan , who is one of the old servants of the Court, form the time when I was a prince had continually wanted the Subah of Gujarat. It thus occurred to me that, as this kind of action on the part of 'Abdu-llah Khan had come about; I might fulfil the hope of an ancient servant and send him to Ahmadabad in the place of the aforesaid Khan. A fortunate hour was chosen in these days, and I appointed him to be ruler of the Subah. On the 10th the mansab of Bahadur Khan, governor of Qandahar, which was 4,000 personnels and 3,000 horses, was increased by 500 personnels". [17]

JUSTICE TO THE SLAVE

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[16] Ibid,vol,1,p,172.

[17] Ibid,vol 1,p,330-331.

On Sunday Haji Rafiq came from ' Iraq, and had the good fortune to kiss the threshold, and laid before me a letter which my brother Shah 'Abbas had sent with him. The aforesaid person is a slave of Mir Muhammad Amin K., the caravan leader, and the Mir had brought him up from his childhood. In truth, he is an excellent servant. He ferequently visited 'Iraq, and became intimate with my brother Shah 'Abbas. This time he had brought tipchaq* horses and fine cloth-stuffs, such that some of the horses were put into the private stables. As he is a skilful slave, and a servant worthy of favour, I honoured him with the title of Maliku-t-tujjar (King of Merchants)."[18]

Punishment to Qazi and hard work by Jahangir for giving justice .These following lines tell us about this;

Now , I do not know whether to call it Samumistan (the place of the samum or simoom) or Bimaristan (abode of sickness), or Jahannamabad (the house of Hell), for it contains all these varieties. If the rainy season had not prevented me, I would not have delayed one day in this abode of trouble, but like Solomon, would have seated myself on the throne of the wind, and hastened out, and released the people of God form this pain and trouble. As the men of this city are exceedingly weak-hearted and wretched, in order to guard against any of the men from the camp entering their houses with a view to oppress them, or interfering with the affairs of the poor and miserable: and lest the Qazi and Mir 'Adl(judge) should, from fear of the face of men (ru-didagi), temporized and not stop such oppression, I , from the date on which I entered the city, notwithstanding the heat of the air, every day, after completing the midday prayer, went and sat in the Jharoka. It was towards the river, ahd had no impediment in the shape of gate, or wall,or watchmen(yasawul), or chobdars (mace-bearers). For the sake of administering justice, I sate there for two or three sidereal hours and listened to the cries for redress, and orderd punishments on the oppressor according to their faults and crimes. Even in the time of Weakness I have gone every day to the jharoka, though in great pain and sorrow, according to my fixed custom, and have looked on ease of body as something unlawful* (haram) for me.

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[18] Ibid,vol,2,p,2

By the grace of Allha, it has become my habit not to surrender the nycthemeron, for more than tow or three sidereal hours of the coin of Time , to the plundering of sleep. In this there are two advantages—one,the knowledge of the kingdom; the other, wakefulness of heart in calling God into mind. God forbade that this life of a few days should pass in carelessness. As a heavy sleep is in front, I must reckon as a gain this time of my wakefulness, which I shall not see again in sleep, and must not be careless of recollecting God for a single wink. "Be wakeful, for a wondrous+ sleep is ahead. " On the same day that I contracted it. His attack lasted a long time, and for ten days he could not come to pay his respects. He came on Thursday, the 24th , and waited for me, and appeared very weak and powerless, so much so that if anyone had not explained the matter, one might have supposed he had been ill for a month or more. I am grateful that at last all ended well."[19]

An incident regarding justice which was based on saying

"King came to the gate of a garden in the heat of the day. He saw an old gardener standing at the gate, and asked him if there were any pomegrnates in the garden. He said: "There are." He told him to bring a cup of pomegranate juice. The gardener had a daughter adorned with grace of person, and beauty of disposition. He made a sign to her to bring the pomegranate juice. The girl went and at once brought a cup full of pomegranate juice, and placed some leaves upon it. The King took it from her hand and drank it. Then he asked the girl what was her reason for placing leaves on the top of the juice. She, with an eloquent tongue and a sweet voice represented that it was not wise at once to drink off a quantity of liquid when he was bathed in perspiration, and in such a hot air. On this account she had placed the leaves on the liquid by way of precaution, so that he might drink it slowly. The King was greatly pleased with her sweet ways, and it crossed his mind to admit the girl into his Palace. After this he asked the gardener: "How much profit do you derive from this garden every year?" He answered: "Three hundred dinars." The King asked: "What do you pay the Diwan (tax-collector)?" he answered: "The King takes nothing from the trees, but takes a tenth of the cultivated crops." It came into the King's mind that there were in his dominions many gardens and countless trees. If he were to get a tenth of the garden produce as well, it would amount to a large sum, and there would be no great loss to the cultivator. Hereafter he would order a tax to be levied on garden produce. He said then : "Bring me a little more pomegranate juice." The girl went, and after a long time brought a small quantity. The King said: "The first time thou camest quickly, and broughtest less." The girl said: "The first time I had filled the cup with the juice of one pomegranate, and brought it ; this time I pressed out five or six pomegranates and did not get as much juice." The

[19] Ibid,vol,2,p,13.

astonishment of the King increased. The gardener represented: "The blessing of produce depends on the goodwill of the King. It occurs to me that you must be a King. At the time when you inquired of me the income from the garden, your disposition must have changed. Consequently the blessing passes away from the fruit." The Sultan was impressed, and drove that idea out of his heart. He then said: "Bring me once more a cup of pomegranate juice." The girl went again, and quickly bringing a cup full to the brim, gave it, smiling and gladly, into the Sultan's hand. He praised the intelligence of the gardener, and explained the actual state of affairs, and begged the girl of him in marriage, and married her.

This true tale of that truth-preserving King has remained as a memento on the page of time. In truth, the manifestation of such spiritual (?)* results in the mark of good intention, and the fruit of justice. Whenever all the energies and purposes of justice-observing Kings are devoted to the comfort of the people and the contentment of their subjects, the manifestations of well-being and the productions of fields and gardens are not far off. God be praised that in this age-enduring State no tax has ever been levied on the fruit of trees, and is not levied now. In the whole of the dominion not a dam nor one grain (habba)+ on this account enters the public treasury, or is collected by the State. Moreover, there is an order that whoever makes a garden on arable land, its produce is exempted. I trust that God (to whom be glory!) will always incline this suppliant towards what is good.

"When my purpose is good, do Thou grant me good."[20]

Jahangir gave punishment and reward to one faithful Amir and criminal.

"I had intended to pass the night in the fort, and the next day to return to camp. As the buildings inside the fort had been built after the fashion of the Hindus, and the rooms were without air and with little space, they did not please me, nor was I disposed to stay there. I saw a bath house,which one of the servants of Dastam+ Khan had built near the wall of the fort . A little garden and a lodging (nishiman) which overlooks (mushrif) the open space is not wanting in space and air, and there is no better place in the whole fort.++ Dastam K. Was one of the Amirs of the late King(Akbar), and from his early years had been brought up in his service. His connection with him was confidential and intimate. H.M.had entrusted this fort to him from his exceeding confidence in him.

After completing my inspection of the fort and houses, I ordered that they should bring before me the criminals who were confined in the fort, so that I might look into the case of each

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[20] Ibid,vol,2,p,50-52.

of them and give an order in accordance with justice. In brief, with the exception of affairs of murder, and of any person through whose release disturbance or calamity might easue in the country, I freed them all, and to each one in accordance with his circumstances gave his expenses and dresses of honour"[21]

Idea of justice of Jahangir

"He had also written a number of idle tales to his disciples and his believers, and had made them into a book which he called Maktubat (letters). In that album (Jung) of absurdities many unprofitable things had been written that drag (people) into infidelity and impiety. Amongst these he had written in a letter as follows: "In the course of my travels I had come to the dwelling of the Tow Lights (the Sun and Moon), and saw a very lofty and very splendid building. From there I passed to the abode of Discriminatiopn (Faruq), and to each I wrote a suitable explanation (or perhaps, of each I wrote a suitable description). From there I reached the abode of Love, and I beheld a brilliant dwelling. It ahd diverse scolours and lights and reflected glories. That is to say (God forgive us!—an exclamation of Jahangir's), I passed from the abode of the Vicegerents (khulafa) and attained to the highest rank." There were other presumptuous expressions which it would be too long to write, and would be contrary to good manners. I accordingly gave an order that they should bring him to the court that is based on justice. According to order he came to pay his respects. To all that I asked him he could give no reasonable answer, and appeared to me to be extremely proud and self-satisfied, with all his ignorance. I considered the best thing for him would be that he should remain some time in the prison of correction until the heat of his temperament and confusion of his brain were somewhat quenched, and excitement of the people also should subside. He was accordingly handed over to Anira'l Singh-dalan to be imprisoned in Gwalior fort." [22]

Respect of Hindu saint yogi gadrup and gave justice to him

[21] Ibid,vol,2,p,59-60.

[22] Ibid,vol,2,p,92-93.

"In my father's reign (the light of God be his testimony!) the weight of the seer was 30 dams. ++ About this time it came into my mind: "Why should I act contrary to his rules?" It would be better to have it still of 30 dams. One day Gosa'in Jadrup said that in the book of the Vedas, which the lords of his faith had written, the weight of the sir was 36 dams. "As from the coincidences of the hidden world your order has fallen in with what is laid down in our book, if it be fixed at 36 dams, it will be well." It was ordered that hereafter throughout the whole territory it should be 36 dams." [23]

Jahangir respects learned man and paid reward him

"As I had often heard of the virtues and good qualities of qazi Nasir of Burhanpur, my truth-seeking mind had a desire for his society. At this time he came, according to summons, to the court. Doing honour to his learning, I paid him great regard. The Qazi is one of the unique of the age for rational and traditional sciences, and there are few books that he has not read, but his exterior did not agree with his interior, and I could not be delighted with his company. As I found him much devoted to being a dervish and seclusion, I respected his feelings, and did not give him the trouble of serving me. I gave him Rs.5, 000, and dismissed him to his native country to pass his days in ease." [24]

Dismissed Hakim Runka for his bad temperament.

"At this time , knowing that he was unfit for duty on account of his bad temper and want of knowledge, I dismissed Hakim Rukna, * and told him he might go wherever he wished . As it was reported to me that Hushang, the brother's son of Khan 'Alam, had committed an unjust murder, having summoned him to my presence, I investigated the charge, and after it was established, gave an order for his execution." [25]

Jahangir gave justice to women and punished a Blacksmith

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[23] Ibid,p,108.

[24] Ibid,p,210.

[25] Ibid,p,211.

"At this time it was reported to me that a blacksmith of the name of Kalyan was much in love with a woman of his own caste, and was always laying his head at her feet, and showing symptoms of infatuation. The woman, though she was a widow, would in no way consent to accept him, and the love of this wretch who had given his heart to her made no impression on her. Having summoned both ofthem into my presence, I cross-examined them, and however much I advised her to unite herself to him, she did not agree. At this time the blacksmith said that if he could make sure that I would ++ give her to him, he would throw himself down from the Shah-burj of the fort. I said by way of jest: "Never mind the Shah-burj; if your love be genuine, fling yourself from the roof of this house, and I'll make her submit herself to you." I had not ended before he ran like lightning and threw himself down. When he fell, blood began to flow from his eyes and mouth. I repented myself greatly of that jest, and was grieved in my mind,and bade Asaf Khan take him to his house and look after him. As the cup of his life was brimming over , he died from the injury

VERSE.

The life-sacrificing lover who stood on that threshold

Gave up his life with joy and regarded death as a trifle."[26]

Conclusion; Jahangir was a great ruler. His administration of justice was very good. He did not discriminate between Hindus and Muslims. He also gave justice to women .Not only that but also he provided justice to the animals. Generally historians make very sweeping remark against Muslims ruler without seeing properly their justice system. While if one goes to the writing of the contemporary time, one might catch the true picture of the ruler.Jahangir was such a great ruler who did not discriminate on the basis of caste,animals,gender,and of course Hindus and Muslims.

[26] Ibid,p,211-212.

Chapter-8th

Administration of justice by Shah Jahan

Shah jahan was a great ruler.He is known more for architecture and art.But he dispensed justice to all in empire and became very famous for this.His justice was not based on Islamic principles.He also did not follow the Islamic law during providing the justice.His state was not Islamic.His judiciary was based on the emperialism

However,he was very serious about his administration of jusice. Shah Jahan devoted some time every day to the administration of justice. When he went to the Jharoka-i-Darshan in the morning, he would at times let down a string from the window and the people tied their petitions to it. The attendants submitted them immediately to the Emperor. The people outside in the plain could easily make their complaints to the Emperor without any obstruction from the officials.[1]In the Ghushal Khana as well he would dispense justice personally according to the principles of Shariah.[2]

The observations of Rai Bhara Mal in his Lubbut-i-Twarikh-i-Hind regarding the paucity of litigation during the reign of Shah Jahan is worth quoting:

"Notwithstanding the great area of the country, plaints were so few that only one day in the week, viz.,, Wednesday, was fixed upon for administration of justice, and it was rarely even then that twenty plaintiffs could be found to prefer suits, the number generally being much less. The writer of this historical sketch on more than one

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[1] Badshah Nama, vol. I, p. 145, (Asiatic Society of Bengal), by Abdul Hamid Lahori.
[2] Ibid., p. 145

occasion., when honoured with an audience of the King, heard His Majesty chide the Darogha of the Court that, although so many confidential persons had been appointed to invite plaintiffs, and a day of the week was set apart exclusively with the view of dispensing justice, yet even the small number of twenty plaintiffs could but very seldom be brought into the court. The Darogha replied that if he failed to produce only one plaintiff, he would be worthy of punishment. If the offenders were discovered, the local authorities used generally to try them on the spot, where the offences had been committed, according to law and in concurrence with the law-officers."[3]

The author of Badshah Nama also writes that Shah Jahan devoted the whole of Wednesday for dispensing justice. No public Durbar was held on that day. In the morning he occupied the throne of justice and sat till noon deciding cases.[4] In the Diwan-i-Khas of the fort at Delhi, Shah Jahan got a Meezan-i-Adl (Balance of Justice) painted on the wall and he daily saw it before going to occupy the throne of justice, so that he might be fair and impartial in his decisions.

According to Abdul Hamid Lahori, the Emperor retired on Wednesday form the Jharokha-i-Darshan to the Daulatkhana-i-khas, and on that day none was admitted there except the officers of justice, theologians qualified to give fatwa, a few learned persons known for their piety and integrity, and a few amirs who always remained in attendance. The officers of justice presented the seekers of justice one by one, the Kind listened to them attentively, cross-examined them politely and passed judgement in accordance with the fatwa of the ulama present there.[5]

This balance served as a source of inspiration to him, as it reminded him of his duty to dispense justice on equal and fair terms to all his subjects as ordained by the Holy Quran. Shah Jahan kept this picture perpetually in his mind when he sat to dispense justice.[6] The Muftis, Qazis, The Ulema, and few nobles were present on that day.[7] The petitioners

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[3] Elliot, vol. VII, pp. 172-73 (Rai Bhara Mal's Lubbuti-i-Twarikh-i-Hind).
[4] Badsha Nama, Vol,. I., p. 150
[5] Ibid,p,150.

[6] From the writer's personal observations in the Red Fort, Delhi.
[7] Badshah Nama, vol. I, p. 150.

were presented before the Emperor and he heard their grievances. He thoroughly satisfied himself and, after consultations with the Ulema, he would deliver his judgement. Many people had come from distant places to seek justice. Their complaints were sent back with orders o the governors to investigate the matter fully and, after complete satisfaction, deliver judgement, or to return the matter again to the Emperor for his personal decision.[8]

Shah Jahan was very careful about prisoners. He inspected the fort of Gwalior and examined the cases of all prisoners and released most of them except a few whose release threatened the security of the state.[9] When he again passed by that fort after five years, there were eleven prisoners in that fort who had suffered imprisonment for long terms. He ordered the release of all of them.[10]

The Emperor had made it a rule to examine the cases of all the prisoners in the forts by which he happened to pass, and he had fixed regulations that the wardern must bring to his notice all the cases of the prisoners under their charge.[11]

When 'Begum Sahib,' his favourite daughter, recovered from an illness in the seventeenth year of his reign, Shah Jahan celebrated a feat to commemorate the occasion. He released persons imprisoned for long-standing debts as a special favour, and all their debts were paid from the royal treasury.[12]

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[8] Ibid., p. 150
[9] Ibid., p. 245
[10] Ibid., p. p. 246.
[11] Badshah Nama, vol. I, pp. 245-46.
[12] Ibid., vol. II, p. 363, Asiatic Society of Bengal.

AURANGZEB

Historians are very hostile with the policies of Aurangzeb.They branded him as bigotry, orthodox and fanatic ruler in India .Historians like J.N.Sarkar[1],Lane poole [2] and many European travelers and so on Criticized him. Simultaneously,his administration of justice was also criticized by the hostile historians .These allegations are not true .The sources that were used by the historians are mostly based on the European sources. Historians should go beyond the European sources.

However, Aurangzeb was a great ruler and provided justice to all, irrespective of castes.Lane poole who painted a bad picture of Auranzeb, has written very praiseworthy word about his judicial administration. He wrote "No act of injustice ,according to the law of Islam, has been proved against him.Ovingoton,whose personal authority is worth little,but who derived his opinions and information from Aurangzeb's least partial critics, the English merchants at Bombay and surat ,says that the great Mogul is 'the main ocean of .....He generally determines with exact justice and equity;for there is no pleading of preference or privilege before the Empeor,but the meanest man is as soon heard by

[1] J.N.Sarkar ,history of Auranzebe.

[2] Stanley Lane-poole,Aurangebe and decay of the Mughal Empire,S.Chand &Co,Delhi.pp,75-87.

Aurangzib as the chief Omrah" [3] **.Maulana Shibli Nomani also pointed out that "The most outstanding phase of Alamgir's period is his administration of justice ,which made no distinction between a relation and a stranger,high and low,friend and foe.In one letters,he writes that he considers princes equal to lay men in the matter justice."[4]**

Aurangzeb was very keen about dispensing justice. He sat in audience two or three times a day to hear complaints. The oppressed people could come without any obstruction and obtained redress. He was very impartial. In his vast Empire no body could do anything contrary to the law and escape punishment enjoined by Muhammadan Law.[5] The Emperor was fully acquainted with the book of eminant jurists. He studied the law, commentaries and traditions, and works of Imam Ghazali, Sheikh Sharaf Yahya Muniri and others for acquiring sound information about the

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[3] Ibid,p,80.

[4] Nomani,Maulana Shibli ,Alamgir,translated into English by Syed Sabahuddin Abdur Rahman,published by Idarah-i-Adabiyat-idelhi,Delhi,1981,p,74.

[5] Elliot, vol. III, pp, 158-60 (Mirat-i-Alam by Bakhtawar Khan).

principles of law, which he applied to cases brought before him for decision.[6]

Auranzeb's justice system was mixed of Islamic laws and his personal interest of justice.we can see through the primary source;

However,Saqi Must'ad Khan ,a courtier of Auranzebe ,has written a book called 'Maasir-i- Alamgiri' has rightly pointed out that "for doing justice, everyday, with open forehead and tender heart, he used to stand up two or three times, and grants justice to plaintiffs who used to find access in crowds without any obstruction to his court of justice and owing to the excessive kindness of His Majesty, used to state their plaints without the least fear or despair: and if in pleading their suits, they used any bombast (hyperbole in praise or censure) or exaggeration (or straining any point) of language or wrong pronunciation (or wrong expression), he did not at all get angry, and not lowring anybody's dignity was ever seen on His Majesty's part. Many times his courtiers urged him to prevent (the plaintiffs) from displaying too much boldness (of speech). But he used to reply "From hearing such words and the occurrence patience". Never did he do any act which was without benefit to the populace. The tribe of harlots was expelled from Delhi, and the same order was published in all the provinces and all sides of the imperial dominions."[7]The author further informs us that " The noble character of this perfect Sovereign. As his blessed nature dictated, he was characterized by perfect devotion to the rites of the Faith; he followed the teaching of the great Imam Abu Hanifa (God be pleased with him!), and established and enforced to the best of his power the

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[6] Ibid, p. 161.

[7] SAQI MUST 'AD KHAN, Maasir-i-Alamgiri, A History of the emperor Aurangzib-'Alamgir ,(Rigen 1658-1707 AD),Translated into English and annotated by JADUNATH SARKAR, Published by ORIENTAL REPRINT and exclusively Distributed by Munshiram Manorahlal Publishers Pvt, FIRST PUBLISHED IN 1947 BY ROYAL ASIATIC SOCIETY OF BENGAL, CALCUTTA in 1947 , second edition 1986 DELHI , P,314.

five foundations of Islam (five daily prayers). He was ever performing the purificatory lavation (before prayer) and repeating the blessed words (of the day) in the masjid or without a masjid, in congregation, and all the sunnan and nawafil and the dearly loved (mustahabbat) ceremonies publicly and with perfect humility. Fasting every month on the 12th and 13th days from the new moon (the brightest days), every week on Monday, Thursday and Friday, he used to perform the Friday prayer in the congregation mosque (jam'I Masjid) in the company of all the Muslims and the community of the faithful." [8]

Auranzeb was very careful for the every civilian and his act was not against the others. The author further pointed out that "The sacred nights he used to pass in wakefulness. With the light of the grace of God, he kindled the lamp of the church and the State . in his excessive quest of truth, in the sanctum sanctorum of the mosque of his royal residence, at nights he held converse with the men of God. In his private chamber, he never reposed on a cushion (masnad). He used to pay the canonical zakat (contribution to other poor of 2 and half percent every year) on the income that he had drawn and spent for his own food and clothing before his accession, in ways which were free from scruple or doubt, and whatever during his kingship he had added to the former by setting apart certain villages of Delhi and two or three salt-producing mahals for his privy purse; calculating the zakat on the income of his royal sons also , he used to send the amounts to the needy. The blessed month of Ramzan h spent in fasting (in the day-time), and to the very end of that month he used to remain busy up to midnight in performing the Sunnan prayer and the tarawih and in chanting the entire Quran in full congregation along with crowds of pious and learned men. On the 10th day of the month of Muharram ('Ashurah), he resided in the mosque in continual prayer . The performance of the ceremonies prescribed fro the pilgrimage to Mecca – which was an obligation of the faith and the goal of his heart's desire – had outwardly to be postponed by him owing to certain obstructions and difficulties; but in order to atone for it, he conferred so many favours (money) on the pilgrims going to the two Holy

[8] Ibid,p,312.

Cities that it was equivalent to the Great hajj itself. And during his reign he used to send large amounts of money , for some years annually, at others once in two or three years, to the pious men living in retreat in those Holy Cities, and a large number of men in those holy places were permanently employed by him on daily stipends to act as his deputies in walking round the Ka'ba, bowing (to the prophet's tomb), reading the two copies of the Quran written by this pious Emperor with his own hand and presented to Medina, counting the beads, repeating the Islamic credo and performing other acts of worship."[9]

Alamgir was an orthodox but it was not harmful for others . He banned music not because of his orthodoxy but because of his more or less personal choice.He was very carefull to others. The Saqi Must'ad Khan wrote in following words;

"The characteristic qualities of scholars and the morals of perfect men, as they ought to be , were truly found in this Emperor of angelic character. His Majesty from the dawning of his understanding , being fully aware of the (canonical) duties and prohibitions, out of the perfect continence of his passions, never partook of any thing except the canonically sanctioned pleasures.

All the agents of pleasure and entertainment, such as sweet-viced singers or charming players on musical instruments, were gathered in large numbers round his throne, and in the first few years of his reign he occasionally listened to their music and had a perfect expert's knowledge of this art; yet out of extreme abstinence he (later on) totally gave up listening to music.

Those of the court chanters, singers and musicians who repented of their sinful art, he made happy by the grant of daily stipends and land as "aid to living ". Mirza Mukarram Khan Safavi, who was an expert in the musical art, once said to His Majesty "What is

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[9] Ibid,p,312-313.

your Majesty's view of music ?" The Emperor answered (in Arabic) "it is mubah, neither good nor bad". The Khan asked, "Then what kind of it is in your opinion most worthy to be heard?" the Emperor replied , "I cannot listen to music without flutes, (be-mazamir) especially pakhawaj, but that is unanimously prohibited (haram); so I have left off hearing singing too"[10].

"He never wore garments declared impure by the Canon (such as robes of unmixed silk yarn), an not at all used vessels of gold or silver. In his company , no improper word such as of slander or obscenity or falsehood was spoken. His courtiers were instructed that when speaking or reading they should substitute some elegant word for every word that had any suspicion of being objectionable. Out of his love for doing justice, everyday, with open forehead and tender heart, he used to stand up two or three times, and grants ustice to plaintiffs who used to find access in crowds without any obstruction to his court of justice and owing to the excessive kindness of His Majesty, used to state their plaints without the least fear or despair: and if in pleading their suits, they used any bombast (hyperbole in praise or censure) or exaggeration (or straining any point) of language or wrong pronunciation (or wrong expression), he did not at all get angry, and no lowring of anybody's dignity was ever seen on His Majesty's part. Many times his courtiers urged him to prevent (the plaintiffs) from displaying too much boldness (of speech). But he used to reply "From hearing such words and the occurrence patience". Never did he do any act which was without benefit to the populace. The tribe of harlots was expelled from Delhi, and the same order was published in all the provinces and all sides of the imperial dominions.

The work of the Censor of Morals was carried out to the full among the general public, both high and low . In administering such a vast empire he never had recourses to any punishment except the hadud and siyasat authorized by the Islamic Holy Law (Shara) and never issued an order for the killing of a man through the force of anger or the vehemence of passion, and none else had the power to do such deeds. By reason, of his

[10] Ibid,p,313.

recognition of the dignity or others and his appreciation of merit, he used to honour Sayyids, Shaikhs and learned scholars (ulama). Through the auspices of this hearty endeavour ,the hanafi creed (i.e., the Orthodox sunni faith) has gained such strength and currency in the great country of Hindustan as was never seen in the times of any of the prceding sovereigns. By one stroke of the pen, the Hindu clerks (writers) were dismissed from the public employment. Large numbers of the places of worship of the infidels and great temples of these wicked people have been thrown down and desolated. Men who See only the outside of things are filled with wonder at the successful accomplishment of such a seemingly difficult task. And on the sites of the temples lofty mosques have been built".[11]

Imperial order for levying the Jiziyah throughout India barring women and children (whether Hindu or Muslim)

Khafi Khan has given detail about the Auranzebe.He points outs following lines;

"The world subduing imperial order was issued that, in order to reduce the infidels to subjection, and to distinguish (India) as a land obedient to Islam (Mutiul Islam) from the lands of infidelity (darul harb), the jizia was to be exacted from the Hindus and it was to be levied in all provinces. After this news had spread, all the Hindus of the Capital and the neighborhood, numbering many lakhs, came by the riverside under the jharoka, and appealed for exemption from the tax for reason of their financial helplessness to pay it. The emperor paid no attention to their appeals. Ultimately , one day when emperor was proceeding to his Friday-prayer a great multitude of Hindus collected together from the gate of the Fort to the Juma mosque, and barred his way in order to appeal to him. The crowd was so great that it became impossible for people to move; bankers and cloth-merchants, in fact all shop-keepers of the army-camp and all artisans of the city, put their works aside and assembled on th emperor's route and feet for not letting him reach the mosque, while every moments the crowd of these wicked people kept on increasing . The emperor halted for a moment; then he ordered his large elephants and his cavalcade to be driven over the crowd and many men were trampled and killed under the feet of

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[11] Ibid,p,313 -314.

elephants an horses. In this manner for a few days the Hindus assembled together and made their appeals; ultimately they submitted to paying of the jizia

This year Jamalatul Mulk Asad Khan was appointed in-change of the revenue administration of the Deccan. As the matatib-i Mahi (insignia of the fish) had in the past been given as a special privilege to the governors and subedars of the Deccan, so Asad Khan was also despatched (to the Deccan) after being honoured by the present of the fish-insignia, an elephant and an ornamented sar-pech.[256]"

Aurangzeb passed order for the common people on various road tax and others. The following lines tell the thing;

"At this time, according to his usual generosity the collection of road-toll (rahdari) on the transit of grains and other articles was abolished for ever. On this account the Crown-lands made a sacrifice to the amount of 25 lakhs of rupees a year; and what was given up for the whole Empire cannot be imagined" [12]

"As famine appeared in many places of the Empire, it was ordered that in addition to the permanent alms-houses ten more should be opened in Delhi and twelve others in the parganahs around it for the relief of the poor. Similar arrangements were made in Lahore. In addition to the amounts customarily spent in the months of Muharram, Rajab Sha'ban, Ramazan, Rabi'-ul-awwal, and Zilhijj, this year double the amount was distributed. Orders were issued to the grandees down to commanders of a thousand that they should practice charity on their own account, and this alms-giving continued until the scarcity was turned into plenty"[13] .

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[12] Ibid,p,16.

[13] Ibid,p,20.

Auranzeb gave order for punishing the wicked person and solving the problem of Children. The following paragraph tells the thing properly;

"The Emperor ordered the Subahdars and faujdars of the provinces of Allahabad and Oudh to search for and send manacled and fettered to the Court of those men who castrated children and to regard it as a peremptory order that no one should be allowed to engage in this wicked practice."[14]

Auranzeb gave justice to old man, two daughters and an Eunuch. The following lines display his justice attitude;

"Next day darbar Khan the nazir was ordered to send the emperor's palki to him and bring him to the mahal. The old man, who had never before in his life heard th name of palki, not to speak of his seeing a palki with poles of silver, was brought in. The Emperor inquired into his circumstances. He replied that he had two unmarried daughters and two sons with bare heads and feet, and that his wife was living. Two hundred rupees were presented to him. He passed two nights in the mahal, and received money, ornaments, and dresses from all (135). As he had heard from some one that I had pressed his suit on bakhtawar Khan, he came and stood before my tent, with a do-shala on his back, a gown (peshwaz) with a daman (hem) on his body, a scarf with gold thread (daman-badla) on his head, kinkhab drwers on his legs, his lap full of gold coins, rupees, and gold ornaments, and a face full of a hundred wrinkles and bleared eyes. I asked "Who art thou?" He replied "I am the man, who has come to such a good fortune through the help of you and your khan." "Be you blessed!" I rejoined, and took him to the Khan, who also made him some presents. After two or three days, the Emperor again ordered the nazir to bring him

[14] Ibid,p,48.

with his daughters. The eunuchs took the palkis and fetched them. This time he got 1,000 rupees for dowry (kanyadan). The people of the mahal gave him money, ornaments and dresses, double those of the first occasion. He was granted water for a second mill in the neighborhood. Order was issued to the nazir to give him sanads from the imperial daftar exempting him from the payment of taxes and molestation for any of the prohibited cesses (abwab).

Hakim Sanjak went by command to the old man's house to treat his eye. Afterwards the man was taken to the houses of Princes Muhammad Sultan, Muhammad 'Azam, Muhammad Mu'azzam, Muhammad Akbar, Asad Khan and Yalangtosh Khan and favoured by them. His daughters were married. His sons put on cloaks of gold embroidery. His wife, having passed through the beauty and vigour of youth, was known as the old crone and leader of the villagers. But it was seen as a fact that this old woman Zulekha-like grew youthful again through the grace of the Yusuf of the Age. It is no exaggeration to say that the wrinkles (136) on her face disappeared and gave place to loveliness. He bleared eyes sparkle again."[15]

Alamgir gave justice to a water –carrier.The following lines display his idea of justice;

"The emperor learnt that Muhammad Muhsin, son of Khan Jahan Bahadur, had been slain in battle at the fort of Naldrug. On Thursday , the 19th October/21st shaban, while the emperor was mounting his horse after returning from the Jam's mosque, a wretch came forward with an uplifted sword. The retinue arrested him; a small wound was inflicted on the finger of Mukarram Khan. The macebearers wanted to slay him, but the emperor forbade it, settled on him a daily allowance of half a rupee and sent him as prisoner to Ranthambhor. On Wednesday, the 25th October/ 27th Shaban, a water-carrier approached the Emperor on the steps of the Jam'a mosque and cried out salam 'alekum. He was ordered to be made over to the kotwal."[16]

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[15] Ibid,pp,81-83.

[16] abid P, 94-95

PENAL CODE OF AURANGZEB

Of all the Mughal Emperors it was Aurangzeb who felt the need or preparing a digested code of Islamic law, because he believed that not only the people of the law courts did possess sufficient knowledge of law. In about A.D. He set up a commission under the leadership of Shaik nizam with six other theologians to prepare a penal code. The code was prepared in about seven years and was called Fatawa-i-Alamgiri . However, it was composed in Arabic and, therefore, a few years later another commission was set up under Abdullah to translate it to Persian. Aurangzeb also issued a Farman to the Diwan of Gujarat on 16th June,1672 giving therein a condensation of his penal code, 4 which was later included by Ali Muhammad khan in his Mirat-i-Ahmadi with the following observation. "May it not remain hidden that much written material is destroyed in the copy of the farman due to its being very old and worm-eaten. There were clerical mistakes. It was corrected as far as possible and included in the book." [17]

Here we are including the English translation of the farman from Mirat-i-Ahmadi.

The Farman

"It was written on 25th of the month of Safar, may God end it with goodness and victory of the 16th year of Royal Ascension to the throne. Administrator of affairs of the Subha should know that it is reported to His Majesty that delay is caused in investigating the affairs of person who are imprisoned in the Subah on occasions for certain offences. Their cases are not decided and settled so that innocent persons may be free form captivity and an offender may get punishment. All energies of His Majesty are directed that none should suffer bias and regret. None should remain in captivity on no account. A royal order is issued that action should be taken in respect of these persons in accordance with sections mentioned in the body of this farman so taht none may suffer captivity without a reason."

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[17] Mirat-i- Ahmadi, Eng. Tr. (Baroda), pp. 248-252.

THE CLAUSES OF THE FARMAN

1. A person in whose case theft is legally proved before the Qazi either on admission or proof should be imprisoned in accordance with law so that he may repent of theft.
2. If theft prevails in the city, and a theif is caught during this time, he should not be put to death or executed on gallows after his guilt is proved, for, perhaps he may have committed theft for the first time.
3. If a person once commits theft, for less than the fixed limit or to the extent of that limit so that he is not liable to punishment but he is proved by law to be a thief, should be kept in prison custody after punishment (flogging) till he repents. It he is not rebuffed by stripes and imprisonment and commits theft again, he should be permanently kept in prison and should be killed out of punishment. Stolen wealth should be given back to its owner after legal proof if there are present otherwise it should be preserved in the Bait-ul-Mal (public treasury).
4. If a man committed theft twice and he was punished also, he again commits it and his theft is proved by law. It may be a small amount. He repeatedly commits it. He should be kept in jail after flogging till he repents. If he is not rebuffed with this and goes on committing theft, he should be permanently kept in prison.
5. A grave-digger who dug somebody's grave and is caught, he should be flogged after his guilt is proved and then released. If he has made it his profession, he should be punished by internment or by cutting his hands. Whatever the Nazim of the Subah decides , should be done in accord with the judges. If he commits it a second time and is caught, he should be severely flogged. Yet he commits it, he should be permanently imprisoned after it is proved. Goods should be sent to the Qazi to act according to religious law.
6. If a person is proved to be a robber under law with admission or proof, the Qazi should punish him in his presence according to proof and law. Punishment should be according to the crime. If his crime does not deserve death or some other punishment, the Nazim as well as the judges do not opine for death, he should only be punished.

7. If a thief is caught, the stolen wealth is pointed out with some one and it is found with him. After investigation it is proved that he is an abettor of thieves. If the latter has committed guilt for the first time, he should be flogged. If it is his profession, he should be imprisoned after flogging till he repents. If he does not improve with flogging and imprisonment and commits it again, he should be permanently kept in prison. Goods should be returned after proof to the owner if he is present otherwise they should be preserved in Bait-ul-Mal. In case they come to know that he purchased goods from the thief without knowing that they were stolen goods, he should be released. If a plaintiff proves them to be his goods, they should be given to him otherwise those goods should be flung aside.
8. Confirmed mischief-mongers who commit dacoity and cause injury to wealth and life, should be punished after the guilt is proved.
9. Girasias and zamindars who are mischievous, rebellious and confirmed offenders should be killed for public benefit. They should be punished on evidence against them.
10. A strangulator whose strangulation is proved, should be flogged and kept in prison till he repents. If he gets habituated to this misdeed which is proved against him or he is notorious among people for this misdeed and the Nazim of the Subah knows about it or investigates of strangulation and property of people are found with him, the Nazim of the Subah and the judges probably believe that the misdeed was committed by him and he should be punished
11. A person who is accused with theft, robbery, strangulation murder or harm to people is caught; the Nazim of the Subah and the judges know that he mostly committed this misdeed, he should be punished till he repents. If somebody had a claim of the theft or similar to it, he should be produced before the Qazi.
12. Mischief-mongers who carry away goods form houses of persons, ablaze with fire by thronging together or make persons unconscious by giving them dhatura, bhang, nutmeg or similar things to eat and rob them. They should be severely punished till they repent. If he is arrested twice or thrice for this misdeed and released after repentance, yet he commits it, should be punished. If somebody claims goods as his own, he should be produced before the Qazi. When legally

proved, compensation for burnt goods or seized goods should be given to the rightful claimants.

13. If some person rose to rebellion and began preparations for collection of arms, but they chose a place and yet not engaged in a warfare should be arrested and imprisoned till repentance. If they are engaged in a warfare in a particular spot, they should be opposed and destroyed. Those wounded and discomfited in battle should be killed ; so long as they are the afflicted and the defeated. Anyone who is arrested from them before their dispersion should be killed or imprisoned. Whatever wealth and goods are seized from them, they should be given back to them after their repentance of this deed.
14. Anyone who prepares counterfeit gold, should be released for first offence after reproof and reprimand. If it is hi profession, he should be flogged after proof and imprisoned till he repents. If he again commits it and does not improve himself, he should be permanently imprisoned.
15. A person, having bought alloyed gold, sells it as unalloyed he should be flogged as before. If he does not improve himself by flogging as before flogging, he should be imprisoned till he repents.
16. A person has alloyed gold in his possession. After an inquiry, it is found that he is neither a maker of alloyed gold nor its seller , he should be released by breaking his alloyed gold. After investigation, he is probably found out to be either a maker or a seller of alloyed gold he should be flogged and released.

17. A man may have extorted money form people through deceit of alchemy; he should be punished after his guilt is proved. He should be imprisoned till he repents. Money which he has owner with legal proof if he is present there. If he is not present, it should be deposited in the Bait-ul-Mal.
18. If someone poisons another person deceitfully and he dies, he should be punished and imprisoned when guilt is proved till he show signs of repentance.
19. A person who entices away the wife, son or daughter of another person by fraud and deceit, he should be imprisoned when the guilt is proved till he surrenders wife to her husband and the son and daughter to their guardian. Or he dies in

prison. If it is found out that the wife or the son or the daughter is dead, he should be most severely punished and then released or paraded through the city or externed. Again, a bawd who makes the wife or daughter of another man lead a vicious life and takes to houses of persons for shameful deed, she should be punished when legally proved and imprisoned till she shows signs of repentance.

20. A gambler should be flogged after inquiry and proof. If he has made gambling his profession, he should be flogged and imprisoned till repentance. If he again commits that misdeed, he should be permanently imprisoned. Money which he has earned through gambling should be given back after legal proof to its owner if he is present there. Otherwise it should be deposited in the Bait-ul-Mal.
21. If some one sells wine once in a city or village of Islam, he should be severely flogged on legal proof. If he repeatedly commits this misdeed and does not abstain from it, he should be flogged and imprisoned till he repents.
22. A person who employs a distiller of wine and sells distilled wine, he should be flogged with stripes and imprisoned, if he is a common man, otherwise his case should be reported to the court. Distiller of wine should be severely reprimanded and punished.
23. A seller of bhang, ale and similar intoxicants should be flogged when proved. If he has made it a profession he should be flogged and imprisoned till he repents.
24. If a person drowns another person in water or throws him into a well or pushes him down form a terrace and he dies. There is a legal proof for the same; the man should be flogged and imprisoned. He should be maked to give blood-money as sanctioned by religion. If he has committed this misdeed more than once, he should be punished.
25. A wicked man who enters a house of another man for mischief should be severely flogged with legal proof and imprisoned till he recovers commonsense and does not commit a misdeed.
26. A person slanders other unnecessarily before officers and causes him to waste his money, when proved he should be punished if he has made it his profession, otherwise he should be flogged and kept in prison until he repents. Money which he wasted, should be paid to him as damage when proved.

27. If a Zimmi or a Zimmi woman employs a Muslim woman as a slave or a concubine or a Zimmi marries an Muslim woman or a Muslim marries a Zimmi woman of the Book they should be produced before a Qazi so that they should act according to bright religion.
28. Sodomites, adulterers and lutis (sodomites), drinkers of wine, all intoxicants, apostates, refractory fellows who disobey and slave who have deserted their owners, debtors, mahajans should turn to the bright religion and act according to the orders of the Qazi.
29. Murderers, whose murder of a person is proved by religion and which is commonly certain should be imprisoned. Their cases should be reported to His Majesty.
30. If a person castrates a son of another person he should be flogged after legal proof and imprisoned till he repents and shows penitence. If the guardian of the child complains, the Qazi should be approached.
31. A chief of innovators, who invites people to innovation and innovation spreads, should be punished when proved.
32. Prisoners who are sent by the Faujdars to the Subedar, the Subedar should immediately, on their arrival, inquire the causes of their improsnment individually. If the cause of their imprisonment was financial matter concerning the revenue office, they should be surrendereed to the administrators of taxation-department; he should insist on disposal of their cases as early as possible, otherwise they should act according to one of the section of this farman. Once in month, cases of prisoners of Kutcheri and Chabutra of the kotwal etc. should be taken. Those who are innocent, shouuld be released. Administrators should be enjoined to decide other cases immediately.
33. A person who is sent to the Chabutra of the Kotwal by the administrators or a plaintiff brings him or he is brought before Kotwal's men, the kotwal should personally inquire into his case. If he is innocent, he should be protected in the Chabutra and released. If some one has a legal suit against him, he should be advised to go to a court of justice. If the revenue office has a financial matter to deal with him or his case is to be dealt with one of the section embodied in this

farman, the Subedar should be informed about it and action should be taken as proposed by the Subedar with his certificate. If a Qazi sends some one, he should imprisoned with the signature of the Qazi on the document. If the Qazi had fixed a period, he should be sent after the expiry of that period to the judges, who should let him off otherwise he should be daily sent to them to decide the case early.

Chapter-10th

Important of Persian sources

Persians sources are very important to understand the Pre-Mughal and Mughal period. Because Persian was the state language and this language was a court language. All court historians have written court history in Persians language.Court historians like Ziayuddin Barni ,Mohammad Kazim Ferishta ,Abu-fazal ,Gul Badam Begham and so on ,all have written in the Persian sources.

Theses sources deal with ranges of issue like daily routing of Emperor ,nature of emperor, court activities, indoor activities of royal ladies ,their affairs with their lovers , administrative work ,description of various gardens ,affairs of emperor with concubine ,prostitutes and many more lively stories ,internal conspiracies, role of nobles in the state and their ego and their affairs with the royal women .

Some times court historians contradict the facts which were problematic. This happened because the sultans or emperor did not give much importance to the court historians .Therefore they became annoyed and did not write objectively and painted very bad picture. This happened with the Ziyauddin Barani who wrote very badly about he Muhammand _bin -Tughlque.During Auranzeb, many historians were not allowed to write of the court histories.

Persians sources and Judicial administration of the Pre-Mughal and Mughal Period

Regarding the judicial administration of the Pre-Mughal period and Mughal Period, the Persian sources are very important .Theses sources have discussed a great length about the judicial system and gave vivid picture of the judicial administration.

If one goes to Parisians sources of pre – Mughal and Mughal period like Ziya ud-din Barni's Tarikh-i-Firuz Shahi, Fatawa-i-Jahandari, Afif's Tarikh-i-Firuz Shahi, Yahya ibn Ahmad Sihrindi's Tarikh-i-Mubark Shahi, Isami's Futuh al – Salatin, Ferishta's memoirs, Babur's Babur nama, Gulbadan Begum's Humayunnama., Abul Fazal's Ain-i-Akbari, Akbar nama, Jahangir's Tajuk-i-Jahan giri, Kazim's Alamgir Nama, Letters of Aurangzeb etc, that will find that the rulers were not able to follow Islamic laws in absolute terms. They have followed their own rules of law: Barani called it

Zawabit.[1] Mughals also followed their own rule of law. Ziyaud-din Barani has given full description of State laws, .He says following ;

Three exhaustives are devoted by Barani to the question – what is law, its importance and role in social and political affairs. Other renowned writers on Mirrors for Princes hardly show interest in such crucial issues and this ultimately supports the thesis that the Fatawa-i-Jahandari ranks not only as a major extant work on political ideas of the Delhi Sultanate but deserves a highly respectable place in the long chain of similar works produced outside the boundaries of the Indo-Pakistan sub-continent.

The Term zabita employed by Barani as a synonym for law is defined by him as 'the pursuance of a course of action which the ruling authority imposes upon itself as an obligatory duty with a view to realizing the ends of government and from which he does not deviate ever'[2]. Law is an indispensable requirement of a State and government. In its absence social, political and economic unbalance captures the realm. Law aims at both immediate and ultimate good. It suppresses moral turpitude, social sins, political turmoil and economic chaos. Barani enumerates three kinds of laws – Law of the Sharia suiting all times and circumstances, customary law and man-made law. All the three kinds are essential for running the administration[3].In the Sharia governed ideal State the Law of the Quran and Sunnah stands supreme. But the secular State of the noble ruler of Khita, i.e., Qadir Khan was essentially based upon the customary and man-made law and it functioned smoothly. The Sharia law is revealed law and it exhibits the reason of the Supreme Being, who is infallible. For its interpretation the ruling authority should seek the assistance of the learned ulema. For day to day governmental business Barani feels the necessity of legislation by the power and urges the use of impartiality, honesty and wisdom in performing this duty. Law making is a very difficult task and the king must make it obligatory upon himself to seek the consultation of the intelligent and wise. Personal whim and fancy should be kept aloof from law and it should not be contradictory to Sharia, reason and public

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[1] Barani, Zia-ud-din,Fatawa-i-Jahandari,(ed.,with introduction &notes by) Dr.Afsar Saleem khan,published by Research society of Pakistan,university of Punjab,Peshawar,September.1972,pp,132-133.

[2] F.J. Nasihats, V, XII and IXV. For definition of Zabita, see f. 157b.

[3] Ibid, ff. 159-161b

welfare. Like Plato and Farabi he strongly believes that law is the custodian of virtue and justice in human affairs. The State founded upon tyranny, fraud, service and individual caprice is tantamount to a tyrannical entity. In laws grounded upon virtue and reason Barani visualizes the stability and prosperity of government and administration. Both Sharia governed as well as virtuous secular states are administered by laws. Barani quotes the ideal law prevalent in the State of Sultan Mahmud of Ghaznah and the rational rules of governmental administration enforced in the secular realm of Qadir Khan of Khita. Both kingdoms prospered on account of the efficiency of sound laws[4]. Barani entertains enormous aversion for lawless and dictatorial States. To whom a monarchy was grounded on the principles of virtue, justice and noble descent is the final destiny of mankind. His ideal ruler is far from being a tyrant or a despot. He is the 'vicegerant of God Almighty' and is committed to the grave duty of the protection of religion and public welfare.

This concludes the summary of the major political doctrines of the Fatawa-i-Jahandari, a copious and valuable dicta on government and administration. The fundamentally realistic origin, form and colouring of the work have been projected at some considerable length. However, the theme of each Nasihat deserves more exhaustive treatment. Barani in his last few days of life felt the urgency of educating princes, governors and administrators in the science of 'government' and 'administration'. The very fact that the supremely valuable treatise had survived in a single manuscript copy, however, does not prove the unpopularity and rejection of the political ideas of the author. The curious form and the anonymous character of the work are the main factors accounting for its non-utilization and reference by the succeeding literati. It is indeed a mirror of past experience and key to sound administration. That political authority should be impartial, neutral and noble are the main doctrines developed in this book. Justice and benevolence are the obligations of ruling power. Politics and government are a means to an end and man has to account for his actions hereafter. If these basic principles of the Fata-i-Jahandari are incorporated in the modern constitutional systems of the developing States, surely

[4] Ibid.

they will be able to achieve political stability, economic viability and moral integrity.

Conclusion

Muslim law or Islamic law was one of the major important legal systems of the medieval world. It had structured a new idea or new political, social and cultural ideas. In India, the Islamic laws also played very significant role in structuring the Indian administrative system, social, political and cultural . It also gave many new ideas about the judiciary system which has been ignored by the writers as some of the historians tried to postulate. The Delhi-Sultanate is marked as 'Dark age'[1] which is not true. Without seeing much into the legal system or judiciary system or the Sultan's and Mughal Emperor's justice to their subjects deeply, some historians tried to evaluate them as blood-thirsty monsters, forcible propagaters of Islam, temple-destroyer and so on.[2] The recent study shows the opposite view in which Richard Eton,[3] Harbans Mukhia,[4] Muzaffar Alam,[5] Satish Chandra,[6] S.M.Jaffar,[7] S.P.Sangar,[8] U.N.Day,[9] A.D.Khan,[10] Wahed Husain,[11] M.Habib and K.A.Nizami,[12] Ibn Hasan,[13] R.P. Tripathi[14] and so on played an important role.

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[1] Chandra, Satish, Medieval India, from Sultanate to the Mughals, Part-1 (1206-1526), Har-Anand Publications Pvt. Ltd., New Delhi, 1997, Second Edition, 2000, p.277.

[2] Jaffar, S.M. Some Cultural Aspects of Muslim Rule in India, Idarah–I–Adabiyat – 1 Delhi , 1992, p.1.

3.Eaton, M. Richard, Essays on Islam and Indian History, Oxford University Press, New Delhi, 2000, pp.94–132.

[4] Mukhia, Harbans, The Mughals of India, Blackwell Publishing, First Published 2004, first Indian Reprint 2005, Delhi pp.14-71.

[5] Alam, Muzaffar, The Languages of Political Islam in India, c 1200 – 1800, Permanent black, Delhi, 2004, pp.1–80.

[6] Chandra, Statish, opcit.

[7] Jaffar, S. M. op.cit.

[8] Sangar, S. P. Crime and Punishment in Mughal Period, Reliance Publishing house, Delhi, 1998, pp.7–8.

[9] Day, U. N. The Government of the Sultanate, Munshiram Manoharlal Publishers Pvt. Ltd, Delhi, First Published, 1997 and Second edition, 1993, pp.107–118.

[10] Khan, A.D. A History of the Sadarat in Medieval India, vol. I, Cpre – Mughal Period, Idarah-i-Adabiyat -i- Delhi, 1998, pp vii – xi.

[11] Habib, Mohammad and Khaliq Ahmad Nizami (ed.), A Comprehensive History of India, Vol five, Part 1, The Delhi – Sultanate, People's Publishing Houses (P) Ltd, Delhi, first published, 1970, first reprint: May 1982, Second edition: October 7992, Reprint – 1996,2006. pp – 1 – 36

The Pre-Mughal and Mughal period was never theocratic and never Islamic. All the chapters show that there were several myths put forwarded by historians which broke by the chapters.

In the Islamic world, the administration of judicial system was well established. In the administration, there was no discrimination based on class-caste. Although administration was run by only the elite but slave can also be a Khalipha as prophet Muhammad has said, there was no absolute power vested in the hand of Qazi-ul-Quzat, Qazi, Sadr or anyother official. They all were the subject of Questions by the upper official system. Even Imam or Khalipha was also not in an absolute position. Prophet clearly said that if Imam follows the law, then subjects follow him, otherwise, subjects should not obey the Imam. To me, the judicial administration was based on hierarchy and grade. All the officers had their own responsibilities and they had to stay within the limitations. Although they had absolute power center within their territory and did whatever they could do, but their power had also boundary and limitation. However, the Islamic judiciary was well established and had very secular and non-partisan justice system.

It has been the habit of many hisororians to talk that Pre-Mughal India laws were based on the Quran, the Prophet precepts and qiyas (analogy) and Hadis both were called Shriat. But due to various reasons, the Monarch was not able to enforce these laws very well.They, therefore, went for compromise and moderations[15] and the state laws were called Zawabit.[16] If these laws violated the shariat, the principle of necessity of istihsan (the public good) could be quoted in their favour. And the back of the shariat was broken for the primary reasons that it has provided no means for its own development. Barani

[12] Hasan, Ibn, The Central Structure of the Mughal Empire, Munshiram Manoharlal New Delhi, First Published 1936, Reprinted, 1970, pp – 3 – 72.

[13] Husain, Wahed, Administration of Justice during the Muslim Rule in India Idarah-i- Adabiyat - i- Delhi, First edition , 1934 reprint, 1970, pp – 1 – 9

[14] Tripathi, R.P. Some Aspects of Muslim administration, Central Book Depot, Allahabad, 1972, pp 1- 7.

[15] Mohammad Habib, Politics and Society during the Early Medieval period, collected works of Professor Mohammad Habid, Vol Two, (ed.,). K.A. Nizami, People's Publishing house, 1981, p. 311-313.

[16] Ziyauddin Barni, p, 126.

told that Zawabit means that it was such a law which was made for the development of the welfare for the state and it was the necessary duties of the king from which he could not come back.[17] Barani also told that for the running of the administration of state, the Ruler and state needs many rules which were made for contemporary needs which were also important for the development of the subjects and welfare for the state.[18]

As we have seen in Pre –Mughal Period that justice was based on the Zawabit that is state law.In the same way ,the Mughal's justice system was based on the Emperor.He was the head of all kinds of justice.We say that being a Muslim and coming from the outside the land they brought new system of judiciary which based more or less on Persian culture. They did follow sometimes Islamic law for getting legitimacy .One can theire base can be Islamic but punishment and crime was certainly not Islamic. Our first three chapters discussed very deeply about the Islamic law .If one goes these Islamic laws, one may find all the Islamic laws, were not able to be implemented. For instance,Drinking wine is sin in the Islamic law but all the emperors took wine very badly. Eating pork is anti Islamic but Jahangir has taken pork during the month of Ramazan which is a holy month of the Muslims.We can see them in practice of justice .All the emperors ,even Auranzeb also was not very strict to Islamic laws.His order was also nor implemented in all over the empire.Although he followed some Islamic law but he was more branded as orthodox ruler .He also advised the Hindus to become a good Hindu.One reference I have gone through which says that one day one day one Hindu person went to Auranzeb and told that he wanted to convert to Islam.Auranzeb asked why? He was silent.He told that if you think that I will provide any reward then you are wrong .You should follow the Hindu religion.He follows the Muslim religion why not you people. Being orthodox for your religion, this does not mean that you are wrong. People should not get affected with religious activities.This is important. This is what Auranzeb wanted to say.
Of course,they made Mosque and worshipsed and followed somewhere Islamic laws but it was not regular. Being an Emperor,they were not able to look the whole India well

[17] Ibid, p, 127.
[18] Ibid, p, 128.

,therefore they appointed Qazi,paragana Qazi and many more officials to look the justice system.

If one goes to primary sources of pre – Mughal and Mughal period like Ziya al-din Barani's Tarikh-i-Firuz Shahi, Fatawa-i-Jahandari, Afif's Tarikh-i-Firuz Shahi, Yahya ibn Ahmad Sihrindi's Tarikh-i-Mubarak Shahi, Isami's Futuh al – Salatin, Ferishta's memoirs, Babur's Babur nama, Gulbadan Begum's Humayunama., Abul Fazal's Ain-i-Akbari, Akbar nama, Jahangir's Tajuk-i-Jahangiri, Kazim's Alamgir Nama, Letters of Aurangzeb etc, that will find that the rulers were not able to follow Islamic laws in absolute terms. They have followed their own rules of law: Barni called it Zawabit.[19] Mughal also followed their own rule of law. Ziya al din Barani has given full description of State laws, .He says following ;

Three exhaustive are devoted by Barani to the question – what is law, its importance role in social and political affairs. Other renowned writers on Mirrors for Princes hardly show interest in such crucial issues and this ultimately supports the thesis the Fatawa-i-Jahandari ranks not only as a major extent work on political ideas of the Delhi Sultanate but deserves a highly respectable a place in the long chain of similar works produced outside the boundaries of the Indo-Pakistan sub-continent.

The Term zabita employed by Barani as a synonym for law is defined by him as 'the pursuance of a course of action which the ruling authority imposes upon itself as an obligatory duty with a view to realizing the ends of government and from which he does not deviate ever'[20]. Law is an indispensable requirement of a State and government. In its absence social, political and economic unbalance captures the realm. Law aims at both immediate and ultimate good. It suppresses moral turpitude, social sins, political turmoil and economic chaos. Barani enumerates three kinds of law – Law of the Shariah suiting all times and circumstances, customary law and man-made law. All the three kinds are essential for running the administration[21].In the Sharia governed ideal State the Law of the Quran and Sunnah stands supreme. But

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[19] Barni, Zia-ud-din,Fatawa-i-Jahandari,(ed.,with introduction &notes by) Dr.Afsar Saleem khan,published by Research society of Pakistan,university of Punjab,Peshawar,September.1972,pp,132-133.

[20] F.J. Nasihats, V, XII and IXV. For definition of Zabita, see f. 157b.

[21] Ibid, ff. 159-161b

the secular State of the noble ruler of Khita, i.e., Qadir Khan was essentially based upon the customary and man-made law and it functioned smoothly. The Sharia law is revealed law and it exhibits the reason of the Supreme Being, who is infallible. For its interpretation the ruling authority should seek the assistance of the learned ulema. For day to day governmental business Barani feels the necessity of legislation by the power and urges the use of impartiality, honesty and wisdom in performing this duty. Law making is a very difficult task and the king must make it obligatory upon himself to seek the consultation of the intelligent and wise. Personal whim and fancy should be kept aloof from law and it should not be contradictory to Sharia, reason and public welfare. Like Plato and Farabi he strongly believes that law is the custodian of virtue and justice in human affairs. The State founded upon tyranny, fraud, service and individual caprice is tantamount to a tyrannical entity. In laws grounded upon virtue and reason Barani visualizes the stability and prosperity of government and administration. Both Sharia governed as well as virtuous secular states are administered by laws. Barani quotes the ideal law prevalent in the Stat of Sultan Mahmud of Ghaznah and the rational rules of governmental administration enforced in the secular realm of Qadir Khan of Khita. Both kingdoms prospered on account of the efficiency of sound laws[22]. Barani entertains enormous aversion for lawless and dictatorial States. To whom a monarchy was grounded on the principles of virtue, justice and noble descent is the final destiny of mankind. His ideal ruler is far from being a tyrant or a despot. He is the 'vicegerant of God Almighty' and is committed to the grave duty of the protection of religion and public welfare.

This concludes the summary of the major political doctrines of the Fatawa-i-Jahandari, a copious and valuable dicta on government and administration. The fundamentally realistic origin, form and colouring of the work have been projected at some considerable length. However, the theme of each Nasihat deserves more exhaustive treatment. Barani in his last few days of life felt the urgency of educating princes, governors and administrators in the science of 'government' and 'administration'. The very fact that the supremely valuable treatise had survived in a single manuscript copy, however, does not prove the unpopularity and rejection of the

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[22] Ibid.

political ideas of the author. The curious form and the anonymous character of the work are the main factors accounting for its non-utilizatio and reference by the succeeding literati. It is indeed a mirror of past experience and key to sound administration. That political authority should be impartial, neutral and noble are the main doctrines developed in this book. Justice and benevolence are the obligations of ruling power. Politics and government are a means to an end and man has to account for his actions hereafter. If these basic principles of the Fatawa-i-Jahandari are incorporated in the modern constitutional systems of the developing States, surely they will be able to achieve political stability, economic viability and moral integrity.

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51. Note: Misunderstood or misrepresented means that several scholars like Jadu Nath Sarkar has misunderstood the Muslims kings, Islam and judiciary system of Islam in general. They have pointed them as very cruel, heartless and not good enough with common masses particularly with Hindus. Historian like P. Hardy from the School of Oriental and African Studies that "Apartheid was the dominant ideal in Medieval India, in default of Cultural victory" has criticized Medieval government in that manner. I.H.Qureshi has criticized the Mughal government in the following words:

"It was a crime to lull the Muslims into believing that the maintenance of the Empire was not their primary responsibility. Even more disastrous was the encouragement of the feeling that tolerance implied the belief that all religions were merely different paths, all equally good for reaching the same God. This was an even more potent cause of the demoralization and degeneration of the Muslims, especially their acceptance of subtle non-Islamic ideas. Indeed this was the darkest period in the history of Indian Islam". (A history of the freedom movement: Being the story of Muslim struggle for the freedom of Hind-Pakistan, 1707-1947, Karachi, 1957, vol.1, p.34.)

R.C.Majumdar also saw Medieval history in a communal angel. He says:

"The newly acquired ideal of a 'secular state' is opposed to all known facts of Indian history. But it is sought to be buttressed by a new conception of Indian history and culture, which recognizes no distinct Hindu or Muslim culture in Modern India, and looks upon these, along with European or Western culture, as

so many streams muting together only to mingle and lose their separate entities in the sea of Indian culture. The Muslims, however, repudiate any such idea, and Islamic culture is not only recognized as a distinct entity, but has been formally adopted as the basis of the new state of Pakistan. In India, however, a small but gradually increasing class of influential persons now fight shy of the term 'Hindu' as a designation of a cultural unit, and only think in terms of Indian culture. Whatever may be value of such an idea in shaping Indian's culture, it becomes positively dangerous when it encroaches upon the domain of Indian history and seeks to ignore the existence of Hindu culture as one of the most potent and patent facts of Indian History even today". (C.H.Philips, (ed.), Historians of India, Pakistan and Ceylon, London, 1961, pp.426-7).

Peter Hardy also misinterpreted history in the following words:

"...neither educated Muslims nor educated Hindus accepted cultural co-existence as a natural prelude to cultural assimilation. Thus long before British rule and long before modern political notions of Muslim nationhood, the consensus of the Muslim community in India had rejected the eclecticism of Akbar and Dara Shikoh for the purified Islamic teaching of Shaikh Ahmad of Sirhindi and Shah Waliullah. Cultural Aparthied was the dominant ideal in Medieval Muslim India, in default of cultural victory".

(Islam in India, Sources of India Tradition, Columbia University Press, See Introduction).

M.S.Golwarkar has said: "In Hindustan exists, and must exist the ancient Hindu nation, and sought else but the Hindu nation. All those not belonging to the national, i.e. Hindu race, religion, culture and language, naturally fall out of the pale of real national life" Golwalkar said about the non-Hindu that "have no place in national life, unless they abandon their differences, adopt the religion, culture and completely merge themselves in the national race. So long, however, as they maintain their racial religious and cultural differences, they cannot but be only foreigners".

Golwalkar again said against Muslims and others that: the foreign races in Hindustan must either adopt the Hindu culture and language, must learn to respect and hold in reverence the Hindu religion, must entertain no idea except the glorification of Hindu religion and culture, i.e. of the Hindu nation, and must lose their separate existence to merge in the Hindu race, or they may stay in the country wholly subordinated to the Hindu nation, claiming nothing, deserving no privileges, far less any preferential treatment – not even citizen's rights. There is – or, at least, should be – no other courses for them to adopt. We are an old nation, let us deal as old nations ought to and do deal with the foreign races who have chosen to live in our country".

Quoted from Sita Ram Yechury's article "Has the BJP disowned this man"? 16 June, 2008, Hindustan Times, p.12.

All above statements are not correct and they represent communal agenda and against the Islamic secular thoughts.

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1. Appendix

THE ADMINISTRATION OF JUSTICE.[1]

The learned among the Hindus say that litigation in its various kinds falls under eighteen titles, for each of which there is a separate course of procedure, viz – (I). Non-payment of debt. (2). Deposits. (3). Sale without ownership. (4). Disputes in partnership. (5). Reclaiming a gift. (6). Disputes between master and servant regarding wages, under which head are included labourers and such as work for hire. (7). Default of revenue by the cultivator. (8). Recession of purchase between buyer and seller. (9). Mulcts on herdsmen. (10). Boundary disputes. (11). Slander. (12). Assault. (13). Theft. (14). Violence with bloodshed. (15). Adultery. (16). Altercation between man and wife. (17). Inheritance. (18). Gambling disputes.

The kind in his judicial character must erect his tribunal facing the east. He must conduct the duties of his office in person, and if he cannot always himself attend to them, he must delegate his authority to a wise, fearless and painstaking deputy. [P. 147]

The plaintiff is termed Vadin and the defendant Prativadin. A child under twelve years of age may not be summoned to court, nor one who is drunk: nor one crazy; nor one who is sick or engaged in the service of the State, nor a woman without relations, or of high family, or who has recently given birth to a child. A discreet person should be commissioned to interrogate such cases, or they should be brought into the royal presence.

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[1] For Hindu Law. Hastings Ency.vii. 850-853 iv. 283 (cnmes). Abul Fazl's Abul Fazl's authority seems to be the Ordinances of Manu of which the 8th chapter deals with Civil and Criminal law. The eighteen titles are somewhat differently worded in Manu, and I give them for comparison. Non-payment of debt: pledges: sale without ownership: partnership and non-delivery of what has been given: non-payment of wages: breach of contract: revocation of sale (and) purchase; disputes between master and servant; disputes about boundaries: assault (and) purchase; disputes between master and servant; disputes about boundaries: assault (and) slander: theft: violence: adultery: the law between man and woman: partition: dicing: games with animals.

The plaintiff's statement is taken down in writing, with the date of the year, month, and day, and the names of the two parties and their ancestors for three descents, and many other particulars. The reply of the defendant is then recorded and both their statements are carefully investigated. The plaintiff is then asked for any documentary evidence and for his witnesses. These should not be fewer than four, though some allow only three, and even one is considered sufficient if he be a person of known veracity.

A child under five may not serve as a witness, nor a man broken down with age. The evidence of a Sudra is only available for a Sudra, and that of a handicraftsman for one of his own trade. The evidence of a blind man may not be taken, nor of one who is deaf, or diseased, or drunk, or crazy, nor a gambler, nor of a notorious evil-liver, nor of one oppressed by hunger and thirst, nor of an angry man, nor of a thief, nor of one who is being taken to execution. For women, women should serve as witnesses. A friend may not witness for a friend, nor an enemy against an enemy, nor partners for each other. In all oral litigation, dryness of the lips, and biting them, and licking the sides of the mouth, alteration of voice and change of colour, should be taken into consideration as collateral proof.

In all suits these conditions of evidence are imperative except under titles eleven to fourteen.

If there be no documentary evidence or witnesses, the judge must decide to the best of his ability, with caution and prudence; but if he cannot discover the facts of the case, he must cause the plaintiff or, as some say, either of the two parties, as he thinks best, to undergo the ordeal.[2] This is of eight kinds.

The first kind. The man is weighed and taken out of the scalse, and after some prayers and incantations, he is again weighed. If his scale rises, his claim is allowed, but

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[2] The word used in the text is oath, is translation of the Sanskrit sapatha, which means also ordeal. It is an asseveration by imprecating curses on the head of the taker of the oath. In this cse ordeal is evidently the true signification.

an even balance or his scale preponderating, are proofs of its falsehood. Some authorities say that the balance is never even. This ordeal is only for Brahmans.

The second kind. Seven or nine circles are drawn with a distance of sixteen fingers breadth between each periphery. The person is then bathed and religious ceremonies and incantations, as above described, are gone through. His two hands are then rubbed over with rice-bran and seven green leaves of the papad-tree (Ficus religiosa) are placed upon them and bound round seven times with raw silk, a piece of iron, weighing 3.5 sers and heated red-hot, is then placed upon the caves which, thus heated, he carries and advances taking one step between each circle, till, on arriving at the last, he throws the iron down. If there is no sign of a burn, his word is accepted. If the iron falls from his hands mid-way, he must begin again.

The third kind. The person is made to stand in water up to his navel and dips under with his face to the east. Then, from a bow measuring 106 fingers breadth, a reed arrow without an iron point, is shot off so that it shall fly with the wind and a fast runner is sent to fetch it. If he can keep under water from the time the shaft is loosed till the runner returns with it, his cause is declared just. This ordeal is especially for the Vaisya caste. [P. 148]

The fourth kind. Seven barley corns of a deadly poison are administered in the spring season (Vasanta), or five in the heats (Crishma), or four in the rains (Varsha), six in the autumn (Sarad), and seven in the winter (Hoimanta). These are to be mixed with thirty-three times the quantity of clarified butter and given to the man after certain incantations. The face of the patient must be towards the south, and the person who administers must face the East or North. If during a period in which the hands may be clapped 500 times, the poison does not take effect, his truth is proved. Antidotes are then given to him to prevent any fatal effects. This ordeal is peculiar to the Sudra caste.

The fifth kind. An idol is first washed, and after worship is paid to it, incantations are pronounced over the water it was washed with, and three mouthfuls of it are given to

the person under ordeal. If no misfortune happens to him within a fortnight, the justness of his cause is acknowledged.

The sixth kind. Rice of the class called Sathi[3] is placed in an earthen vessel and kept all night. Incantations are next morning pronounced over it, and the person is made to eat it while facing the East. He is then required to spit upon a leaf of the papal (Ficus religiosa), or the bhojpatra (Betula bhojpatra). If there should be any marks of blood, or the corners of the mouth swell, or symptoms of ague supervene, the untruth of his case is inferred.

The seventh kind. An earthen or stone vessel is taken, measuring sixteen fingers in length and breadth, and four fingers deep. Into this forty dams weight of clarified butter or sesame-oil is poured and brought to boiling point, and one masha of gold, which is equal to four surkhs, is thrown into the boiling-oil. If the person can take out the gold with two fingers without being scalded, his cause is just.

The eighth kind. A symbol of Dharma, or Innocence, is fashioned of silver, and one of Adharma, or Guilt, of lead or iron; or the former word is written on a piece of a white cloth, or a leaf of the bhoj tree, and the latter on a piece of black cloth, and these are put into a jar which has never held water. The person under ordeal is then told to draw out one of these. If the symbol of innocence is drawn out, his cause is just. This ordeal is applicable in determining the righteousness of all four castes.

If a suit cannot be decided in one day, bail is taken; and a second suit may not be brought against the same person till the first is disposed of. When a claim is proved, the plaintiff is put in possession, and a fine of an amount equal to the value of the suit is exacted of the defendant. If the plaintiff loses his cause, he pays double the value of the suit.

Having cursorily explained the procedure regarding suits evidence and ordeal, I now as briefly record the mode of adjudication under the eighteen titles of law-suits.

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[3] Produced in the rains and so called because it ripens in 60 days from the time of sowing.

1. *Non-payment of debt.* If the debt is without deposit and the dispute be regarding the amount of interest, a Brahman shall pay two per cent, (per mensem), a Kshatriya three, a Vaịsya four, and a Sudra five per cent. If there be security, only one-fourth of the above amounts are recoverable though a higher rate may have been agreed to. For risks by land-travel, up to ten per cent is allowed, and not exceeding twenty-five per cent for risks at sea. If interest has been agreed upon, and-ten times the length of the _____ period has elapsed, a claim shall not be allowed for [149] more than double the principal.[4] When the interest is paid on corn, the sum of the interest and principal should not be more than five times the principal. If the debtor is unable to pay, he must renew the obligation bringing the instrument[5] and witnesses for its verification.

2. *Deposits.* If the receiver of a deposit makes use of it without the owner's permission and delays its restoration when claimed, he shall forego half the interest due (in compensation). If he denies the deposit and there be no documentary evidence or witnesses, the judge may privately direct a third person to make a deposit with the same man and after some time to demand it back. If he acts as before, he shall be compelled to satisfy the first claim, or submit to trail by ordeal; but if the pledge be stolen by a thief, or if it be burnt, or washed away by water, or plundered by an enemy, restitution shall not be made. If he has dealt fraudulently with it, he shall make restitution and pay a similar amount as a fine.

3. *Sale without ownership.* If a man claims possession of property, it shall be restored to him free on proof of ownership, and the money taken back from the seller. And if it be sold privately or under its value, or by a person not entitled to do so, the

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[4] That is, the sum of interest plus principal must not exceed twice the original debt. According to Manu, five times the principal is payable on corn fruit, wool and draught animals.

[5] It is worth while noticing that the Sanskrit for this term karrrranam is translated by Hopkins 'proof', while stating in a note that the meaning 'document' given by commentators is not necessary and seems improbable. Yet this is exactly the translation of Abul Fazl the word 'Sanad' employed by him signifying document or instrument.

judges shall fine the offender as he thinks proper. And if he brings forward the thief,[6] It shall not be imputed as the crime of a thief, but a fine shall be exacted from him as a thief.

4. *Partnership.* If there be a dispute between partners and any formal deed of partnership exists and be proved, it shall be carried out in accordance with its terms: otherwise the profit and loss shall be divided according to the proportions of capital invested. If one of the partners dissipates the joint property or, without the consent of the other, removes it or otherwise fraudulently deals with it, he shall make it good to the other by a fine. Or if on the other hand, he makes a profit, he shall not be required to give more than one-tenth to his partner. If one of them is guilty of fraud, he shall be ejected from partnership and the interest due to him shall be exacted by the judge. If one of the partners be left in charge of the joint property and any deficiency or injury occurs through his neglect, he shall make it good.

5. *Reclaiming a gift.* If a gift is made under the influence of anger, sickness, grief, fear, or as a bribe, or in jest, it may be recalled: also what has been given by a child, or a drunken or crazy man. In other cases it may not be reclaimed. And if the gift be made for a future benefit or in exchange, it may not, under any pretence, be resumed.

6. *Wages, Hire, Rent.* If wages, hire, or rent be received in advance, the agreement may not be violated. If it be broken, the offender shall be fined to the amount of double the sum; but if the money has not been actually paid, the fine shall extend only to the amount originally fixed. If a servant loses his master's property, he must make good the equivalent, but if it be taken from him by violence, he is not liable to restitution.

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[6] Or "'if he appear a thief." The elliptical language of the text can be understood only by comparison with the text of Manu verses 197-198 run as follows: - (197.) "If a man not being himself the owner; sells the property of another without the owner permission, one should not allow him to be a witness. (since he is) a thief (although) he may not think he is a thief.

(198). He should be held to a fine of 600 panas if he is a near relation: if he is not a near relation and has no excuse he would incur the fine of a thief.

7. *Revenues*. If anyone fail to pay the usual revenue, the whole of his assets shall be confiscated, and he shall be expelled from the country.

8. *Purchase and sale*. A purchaser may on the day of purchase return the goods bought; on the second day he may return them on a forfeit of a twentieth of their cost: on the third day, of a tenth, after which they cannot be sent back. But a maid-servant may be sent back within one month; a slave, within fifteen days; corn, within ten days; jewels, within seven days; cattle in general, within five days; a milch-cow, within three days; iron, within one day; unless there be any stipulation to the contrary. The same conditions hold good with the seller, but he must sustain the loss in the same proportion as the excess payments of the purchaser in the opposite case.

[150] 9. *Herdsmen*. If through the neglect of a herdsman a beast is lost or dies or is injured, he must make good the loss. If cattle eat a grain-crop near a village or city, the herdsman is not amenable to fine. Sown-fields should be distant from a small village four hundred cubits; from one of moderate size, eight hundred, and from a large settlement, sixteen hundred cubits.[7] If the trespass should occur through the neglect of the keeper, he must pay the value of the crop destroyed, otherwise the owner of the cattle is responsible. For a buffalo, a camel or a ,donkey the fine is seven mashas of silver: for an ox, half the above: for a sheep or goat, half the fine for an ox. If the beast lies down to eat, the fine is doubled. An elephant, a horse, as well as cattle set at liberty as an act of piety. (it being the custom, eleven days after the death of a Brahman, thirteen days after the death of a Kashatriya, sixteen days after that of a Vaisya, and thirty days after the death of a Sudra, to let loose eight or four bulls, or one bull with a number of cows after branding them in a special manner) or a cow that has lately calved, or animals that have strayed, are not amenable to fine if they damage the crops. The same rule applies to royal preserves as to crops.

[7] "Round about every village there should bea strip of land one hundred bows or even three casts of a staff in width: around a city. It should be three times as wide." Manu VII 237. This land is intended for a common and not to be tilled. The staff is picked up after the first cast, and again as it falls, and so on three times. The strength of the cast might figly be that of Polypcetes Iliad, XXIII, 845.

10. *Boundaries*. Disputes regarding boundaries may be adjudicated at any season save during the rains.[8] The owners of land define their boundaries by burying charcoal, stones, potsherds, hair, bones, and the like that do not perish even after a long time; and sometimes a tree is made the boundary. The judge determines the dispute on the production of such evidence, and the witness of four, eight, or ten husbandmen, keepers,[9] or hunters.

The witnesses shall wear red garments, place earth upon their heads and wear a string of red flowers round their necks, and shall swear that their good deeds may lose all merit if they lie. If there be no witnesses nor boundary mark, the judgment of the king shall determine the line.

11. *Slander*. This is of three kinds, viz. – (1). Reviling another to his face. (2). By insinuation and suggestion. (3). Reviling his mother, sister, or such other improper language. For the first two, if the abuse be from one of inferior towards one of a superior caste the fine is twelve-and-a-half dams; to an equal, half that sum; towards an inferior, one-fourth. For the third kind, the fine is twenty-five dams, if between equals, or if a Brahman reviles a Kshatriya; but fifty, if the abuse is from a Kshatriya to a Brahman. If a Vaisya reviles a Brahman he is fined seventy-five dams, but in the opposite case the fine is twelve-and-a-half; and the same proportion between a Vaisya and a Sudra. If one of the gods be reviled, or the king, or a Brahman who has read the four Vedas, the fine is 540 dams. If the abuse be directed against the people of a quarter, half of the above; and one-fourth if against the inhabitants of the city.

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[8] If a dispute has arisen between two villages in regard to a boundary, the king should determine the boundary in the month of Iyaisha (middle of May of middle of June) as the boundary marks are then very plain." Manu, viii. 245.

[9] The men named by Manu are hunters, bird-catchers, cowherds, fishermen, root-diggers, snake-catchers, gleaners, and other men who wander about the woods. The text has sipahan (which Jarrett trans as keepers), a misprint for pasbanan or watchmen. [J.S.]

12. *Assault.* This is of four kinds: (1) Throwing earth, clay or filth upon any one. (2) Putting him in bodily fear by threatening him with the fist, a stick, or other weapon. (3) Striking with the hands or feet and the like. (4) Wounding with any weapon.

The first kind. In the first case, the fine is five dams, but if filth is thrown, ten, provided the parties are equals; but twice as much if it be an inferior against a superior, and only half in the opposite cases.

The second kind. Threatening with the hand, etc., five dams, and (with stick or other weapon) between equals, eleven; between superiors and inferiors, as above.

[151] *The third kind.* If the blow causes a swelling or pain in the limb, 270 dams. If by an inferior against a superior, the hand or foot, or other offending member be cut off, or a suitable fine inflicted. In the instance of a Kshatriya against a Brahman, the fine is 540 dams; a Vaisya against a Brahman, 1,080; a Sudra against a Brahman, 2,160, a Vaisya against a Kshatriya or a Sudra against a Vaisya 540; a Sudra against a Kshatriya, 1,080; a Brahman against a Kshatriya, 135; or against a Vaisya, 67.5; or against a Sudra, 33.5; a Kshatriya against a Vaisya, 135; against a Sudra 67.5.

The second kind. Between those of like caste if the skin be abraded, fifty dams, and if the flesh is cut, twenty tolahs of gold, and if a bone be broken, the offender is banished. If an inferior against a higher caste, the fine is doubled, and in the opposite case, it shall be a-half. If treatment is necessary, the offender shall pay the expenses of medicine and daily 'keep; till the injured man be restored to health.

In the case of a sheep, antelope[10] and the like, if there be hurt, the fine is eight dams; if it be rendered useless, the value must be paid to the owner, with a fine of 125 dams; and twice as much, if it be killed. For a horse, camel, or ox, the fine is also double. When damage is done to valuable plants, the value must be paid to the owner and a fine of ten dams, but eight dams if they be of small value.

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[10] Different sorts of antelopes and deer, flamingoes and parrots, are "propitious" forest animals, and a fine imposed for killing them: also the small animals, such as crows, cits, etc.

13. *Theft.* If anyone steals above one hundred tolahs of gold or silver or any valuables up to this amount, or more than 66 $^2/3$ mans of corn, or the child or the wife of any person of distinction, he shall be liable to the punishment of death. If the amount be less than one hundred and more than fifty tolahs, he shall suffer the loss of his hand. If fifty or less, he shall pay eleven times the amount as a fine. The same applies to corn. In all cases the equivalent of the amount stolen shall be made good to the owner, and if the thief is unable to pay he shall work out the amount in menial service. In other cases of theft, corporal punishment, imprisonment or fine, is at the discretion of the judge.

14. *Violence with bloodshed.* If a man of inferior caste kills a man of a higher caste, the penalty is ___. If a Brahman slays a Brahman, his entire estate shall be confiscated, his head shaved, his forehead branded and he shall be banished from the kingdom. If a Brahman slays a Kshatriya, he shall pay a fine of 1,000 cows and a bull; if he slays a Vaisya, 100 cows and a bull, or if a Sudra, 10 cows and a bull. The same rule applies to Kshatriyas and Vaisyas. If a Sudra slays a Sudra, he shall be fined 500 cows and a bull. If the murderer be not found, the people of the city, village, or quarter in which the murder was committed shall produce some of his family or pay in default any fine that the king may inflict.

15. *Adultery.* Commerce between a woman and a man other than her husband, is of three kinds: (1) When they converse and jest together in private. (2) When a present is sent to the house of the other. (3) When they meet and criminal intercourse ensues. In the second case, a fine may be inflicted at the discretion of the king. The third is of two kinds, viz., with a maiden and one who is not a maiden. The former may be dishonoured.... The latter may be women who are guarded, or such a gad abroad.[11] In each of these four cases it may occur with the woman's consent or otherwise, and of these eight, the criminality may take place between two of a like caste. In the latter instance, if it be a girl and she consents in all these offences, and no force is offered on

[11] Hopkins translates 'wandering women' (Manu. VIII. 363) and supposes them to be possibly Buddhistic nuns. Sir W. longs interprets 'female anchorets of an beretical religion'. Abul Fazl's ___ is kucha gard gadding about the streets.

one side or resistance on the other, the man shall be compelled to marry her whether he will or no. In the case of pollution and the like, he must pay a fine of 200 dams. If he violates her without her consent, he shall be put to death, but the woman is not liable to punishment. If he forcibly pollutes her, he must suffer the loss of his fingers, and pay a fine of 600 dams. If the offender be a Brahman, he shall be banished, but no other penalty is exacted. If the man be of higher caste, he shall be made to take her in marriage, even if he be unwilling, in which case an additional fine is imposed. If she be not a maiden, and both be of like caste, and she be guarded,[12] and give her consent, the man is fined 270 dams, but if without her consent, the fine shall be 540 dams. If she be one used to gad abroad and consents, the fine is 250 dams; if forced, 500. If the man be of higher caste, the fine in all cases shall be 250 dams; if of inferior caste, death is the penalty in every instance, and the ears and nose of the woman shall be cut off.

16. *Altercation between man and wife.* If after marriage a man discovers any natural defect in his wife, he may put her away without remedy on her part, but the woman's father shall be fined. If a man offers one daughter in marriage and substitute another in her place, he shall be compelled to give both. When a man has journeyed on a pilgrimage to holy shrines and is absent beyond the term agreed upon, the wife shall wait at home for eight years whatever her position in life may be.[13] If he has gone abroad for the sake of knowledge or fame or wealth, she shall wait for six years: if he journeys to seek another wife,for three years. At the expiration of these periods, she is at liberty to leave her husband's house to obtain a livelihood. The husband on his return from abroad, if he wishes to put her away on account of her departure, is not permitted to do so. If the wife does not observe the condition of these periods, the husband is at liberty to put her away. If the husband falls sick and the wife does not minister to him, he may not, on his recovery, for this cause divorce her, but he may refurse intercourse with her for three months and deprive her of all that she possesses, after this period he shall be reconciled to

[12] Under the protection of her husband or other male relative.

[13] One commentator's opinion is that, after the eight years she must follow him. Another states that she marry another of husband. The former opinion, says Hopkins, rests on a later view of second marriages.

her. With Brahmans, divorce does not take place but a husband may avoid the sight and presence of his wife: her maintenance must nevertheless be continued. The wife may not take another husband. If he be guilty of great crimes or have any contagious disease, the wife is at liberty to separate from him. If a Brahman have a wife of each of the four castes, he shall assign them their respective social functions. In religious ceremonies, and personal attendance such as anointing with oil and adorning[14] him and similar duties, he must employ only his own caste.

17. *Inheritance.* While a son lives, no other relation or kinsman shares the estate except the wife who is equal to the son. If there be neither son nor wife, the unmarried daughter inherits. If there be also no daughter, the mother is the heir. [P.153]

If there be no mother, the father takes possession.

If there be no father alive, his brother shall be heir.

In default of a brother, the brother's son inherits.

In default of a brother's son, the estate is divided amongst the surviving kindred.

If he leaves no relations, the teacher inherits, or in default of the teacher, his fellow pupils.

In the absence of all these, the estate lapses to the Crown.

18. *Gambling.* Whosoever plays with false dice shall be banished. If he refuse sto pay his stake, it shall be taken from him, and of his winnings, the king shall receive one-tenth, and one-twentieth shall be taken for dues.[15]

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[14] The duties of a Brahman's wife are to give food to beggar guests and attend to her part of the sacrificial preparations. She bathes and adorns her husband, cleans his teeth and anoints him: and since she holds the highest rank she gives him his food drink, wreaths, clothes and ornaments.

[15] I presume the reading is questionable. It probably refers to a licence for the tables or permission to play. For Hindu gambling rules. Hastings. Ency, iv, 284.

To each of these eighteen titles there are many illustrations, and conflicting opinions are recorded. I content myself with this short exposition.

تقدیم

به

مادر و پدرم

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پایان نامه برای دریافت دکتری

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نظام دادگاهی هند در عهدگورکانیان بویژه منابع فارسی

نگارش

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تحت راهنمایی

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